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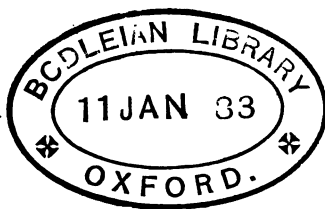
SETTLED LAND ACT, 1882, &c.

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SECOND EDITION.

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1882.

LONDON :
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PREFACE.

THE first part of this book is a collection of those precedents in conveyancing which are, or which after the Acts of this year have come into operation may be expected to be, in frequent use in conveyancers' chambers and in solicitors' offices. The precedents are arranged so far as possible in the order in which the transactions represented might be expected to occur. Thus a purchase of land is followed by a mortgage, and then by a sale by the mortgagee; a marriage settlement is followed by a deed of separation, and a will by a disclaimer of trusteeship, concluding with a general release to trustees.

The combinations of events in life are so numerous that it is impossible to provide a precedent for every contingency, especially in the cases of settlements and wills. Such precedents as are inserted have accordingly been selected for their simplicity, because it is believed that the simpler forms more readily adapt themselves to the occasion.

In Part II. the Conveyancing and Law of Property Act 1881, the Conveyancing Act 1882 and the Settled Land Act 1882 have been printed in full, with foot notes to those sections which require special attention. Such notes are for the most part of an explanatory not of a critical nature. The Conveyancing Act of 1881 has been in operation for nearly a year: much able criticism has been passed upon it, and it seems now to be the duty of the conveyancer to accept its provisions with thankfulness rather than to cavil at any imperfections. In this spirit the

object in framing the precedents contained in Part I. has been to make them as concise as is compatible with accuracy and precision of language.

The Settled Land Act 1882 gives to the tenant for life the powers of selling and otherwise dealing with the settled land which have hitherto usually been confided to the trustees of the settlement. In exercising these powers the tenant for life must of course confine himself strictly within the limits of the Act, and it will be important for those who deal with him to see that the deeds which he executes are in the proper form, and that the money is paid to the proper persons. The provisions of the Act are somewhat special upon these points, and it has therefore been found necessary to introduce a considerable number of precedents adapted to sales mortgages leases and other dealings with the settled land by the tenant for life.

Besides the above-mentioned Acts which as affecting a large number of precedents have been separately printed, there are other Acts of more limited application so far as conveyancing is concerned. Extracts from these are for convenience of reference appended throughout the book to such precedents as they concern. Thus the Vendor and Purchaser Act 1874, the Bills of Sale Act (1878) Amendment Act 1882 and the Married Women's Property Act 1882, or such portions of them as it seems desirable to set out, are inserted under precedents of conditions of sale a bill of sale and a marriage settlement respectively.

At the end of the book are printed the Solicitors Remuneration Act 1881 and the general order issued under that Act.

H. M. H.

INTRODUCTION.

IN a book of this nature, containing both precedents in Conveyancing and the Acts which have recently been passed effecting such important changes in that branch of the law, it seems appropriate to say a few words by way of introduction indicating briefly what those changes have been.

The object of the Conveyancing and Law of Property Act 1881 as expressed in its title is to simplify and improve the practice of Conveyancing. The Act has now been in operation for nearly a year: few cases under it have yet been decided, but by aid of the criticisms which have been passed upon it from many quarters, and of which full advantage has been taken in preparing these precedents, it is possible to estimate with some accuracy the value of its provisions. Undoubtedly it has introduced many great improvements into Conveyancing. Scarcely any measure dealing with such a subject could have failed to do so. At the same time considerable doubt has been thrown upon its meaning or application in several particulars, and in the absence of judicial interpretation it is advisable to use the Act with discretion.

The principal provisions of this Act, some of which are modifications of previous enactments, appear to be these—

1. Certain conditions of sale will attach to all contracts of sale unless expressly or by implication excluded (s. 3).
2. General words and the estate clause may be omitted from deeds (ss. 6 and 63), and covenants for title and against incumbrances will be implied by the use of certain prescribed formulæ (s. 7). A short acknowledgment in

writing of the right of another to production of documents and an undertaking for their safe custody may be substituted for the covenant to that effect (s. 9). Certain cumbrous expressions formerly of frequent occurrence in deeds, such as the repetition of "survivors and survivor," "heirs executors administrators and assigns," the joint account clause, may be considerably shortened or altogether omitted (ss. 10, 11, 38, 58, 59, 60, 61). 3. In every mortgage made by deed, powers of selling, of insuring, of appointing a receiver and of cutting timber are given to the mortgagee by the Act (ss. 19—24), or a short statutory mortgage out of the third schedule may be used in simple cases, which will save the mortgagor the expense of a longer document, and will refer the mortgagee to the Act for his rights and remedies instead of to his deed (s. 26). 4. Powers for securing rent-charges are given to persons entitled to them (s. 44). 5. Powers are given of appointing new trustees (s. 31), and trustees are to have certain powers such as of giving receipts, compounding debts, maintaining infants and managing their estates (ss. 36, 37, 42, 43). 6. The law has been amended or altered in the following particulars:—The right of a lessor to forfeit a lease on breach of covenant is, with certain exceptions, restricted by requiring notice to be given to the lessee, who within a reasonable time may remedy the breach or make compensation (s. 14). A mortgagor may require the mortgagee to transfer the mortgage to a third person instead of reconveying it (s. 15, Conv. Act 1882, s. 12). Consolidation of mortgages will not be permitted (s. 17), except where provision is expressly made by one of the deeds against this section. A mortgagor or mortgagee while in possession may grant leases of the mortgaged land (s. 18). Trust and mortgage estates on death will devolve to the personal representatives notwithstanding any testamentary disposition (s. 30). 7. Certain rather arbitrary powers are confided to the discretion of the Court, such as the power of discharging incumbrances behind the back of the incumbrancer on a sale of land (s. 5), and of

dispensing with the restraint on anticipation by a married woman (s. 39).

Such are the more important provisions of this Act. In the precedents contained in the first part of this book it has so far as possible been made use of throughout. Where it appears doubtful whether the Act is applicable or satisfactory, attention has been called in a note, and reasons given with directions how the Act may be adopted if those reasons should seem insufficient.

The Act also indirectly attempts to introduce certain changes of minor importance into the language of deeds. Thus instead of "grant" and "heirs," words of long established use and well known meaning, "convey" and "in fee simple" are suggested as alternative expressions. These latter are not enjoined, they are not even recommended by the Act; the one is introduced in the third and fourth schedules, the other is offered as a sufficient substitute by section 51. Such changes have not, it is believed, met with the approbation of the profession, and for the reasons given at pages 295, 296, they have not been incorporated into this book. If it should at first sight seem that a needless tautology has been suffered to remain in the habendum of deeds by the retention of the full expression "to have and to hold," the reason is one which will commend itself to all whose business it is frequently to read and decipher deeds engrossed in the usual way on parchment. The first passage to which recourse is had to discover the nature of the document is the habendum, and the advantage to the reader of having those words written large as a sign-post for his guidance ought not too readily to be renounced for the sake of ideal simplicity.

The Conveyancing Act 1882 chiefly consists of clauses struck out from the bill of 1881 by the select committee. It provides that searches in the Central Office of the Supreme Court of Judicature shall be made by the officers instead of by the person requiring the search to be made (s. 2): it defines the law relating to notice (s. 3). For the rest it contains certain modifications or amendments

to the Act of 1881, the necessity for which had already been shown to exist (ss. 11, 12).

A few entirely novel forms have been introduced by these two Conveyancing Acts, such as an enlargement of a long term into a fee simple (Act of 1881, s. 65, Act of 1882, s. 11), an appointment of a separate set of trustees (Act of 1882, s. 5). Special precedents for these have been inserted in Part I.

The Settled Land Act 1882 is to the conveyancer of equal importance with the Conveyancing Acts, to the land owner of even greater importance. It is an Act for facilitating sales, leases, and other dispositions of settled land, and for promoting the execution of improvements thereon. The manner in which its object is to be attained is very simple. It provides that the tenant for life, as being the person most immediately interested in the proper management and improvement of the estate shall have the powers of dealing with the settled land which have hitherto usually been given to the trustees by the settlement. Under the Act the tenant for life, without the consent of the trustees, will be able to turn the land (with the exception of the principal mansion house and park) into money, to turn the money back again into land, or to invest it in securities; with the consent of the trustees, or under an order of the Court, he will be able to sell the mansion house and park, and to apply capital money arising under the Act in the execution of improvements upon the land. Only, in the interests of those who come after, and in order that property which has been acquired by the labour or merits of ancestors, and handed down through generations may not be dissipated by the extravagance of one, the Act takes care that the tenant for life after using or misusing the family estates, after selling, buying, leasing, building, mining, shall on his death leave the corpus of the property, in whatever shape it may then exist, for those to whom the settlement has given it.

The provisions of the Settled Land Act 1882 may be arranged under the following headings:—

1. Powers are given to the tenant for life to effect sales, enfranchisements, exchanges, and partitions of the settled land (s. 3). The manner in which these powers are to be exercised is worked out by the following sections. Thus, to take the case of a sale, under s. 45 the tenant for life must give one month's notice of his intention to each of the trustees of the settlement and to their solicitor, if known; under s. 31 he can enter into the contract for sale, which under s. 4 may be for a sale in one lot or in several lots and by auction or private contract, but under the same section it must be for the best price that can reasonably be obtained; under s. 17 he can sell the surface or minerals apart; but under s. 15 he cannot sell the principal mansion house or park, except with the consent of the trustees or under an order of the Court. Under s. 20 he can complete the sale by a conveyance, which will be effectual to pass the land conveyed discharged from all the limitations of the settlement, but subject to all interests prior to the settlement, and to other interests excepted in subs. 2. Under s. 22 the purchase-money must be paid either to the trustees of the settlement, who under s. 39 must not be less than two for the purpose of receiving it, and who under s. 40 can give an effectual receipt; or under s. 22 it may be paid into Court. Under s. 21 the money can be applied in the purchase of land, or in any other mode authorised by that section. A similar course, so far as the above-mentioned sections are applicable, will have to be pursued on any other dealing with the settled land under the powers given by this Act. Further, by s. 18 the tenant for life may raise money for enfranchisement or for equality of exchange or partition by mortgaging the settled land, and by s. 5 on a sale, exchange, or partition of part of the settled land he may, with the

consent of the incumbrancer transfer the incumbrance to any other part of the land in exoneration of the part sold, or given in exchange, or on partition.

2. The tenant for life may, under s. 6, lease the settled land, in the case of a building lease for ninety-nine years, in the case of a mining lease for sixty years, in the case of any other lease for twenty-one years. Thesections next following contain the conditions and regulations under which such leases are to be made.
3. Special provisions are made by ss. 25-30 for enabling the tenant for life to apply capital money in the execution of improvements upon the settled land. The list of improvements permitted is very comprehensive, but in order that money may not be wastefully or improperly expended on useless or only temporary improvements, the Act provides by s. 26 that the scheme of improvements must be approved by the trustees or by the Court, and a certificate from the Land Commissioners or from a competent engineer or surveyor or an order of the Court must be obtained before the money can be so applied.
4. Other sections of the Act complete the details by which its machinery is to be set going and is to work easily. They provide for the protection of persons dealing with the tenant for life (s. 54), for the appointment of trustees (s. 38), for the settlement of difficult questions or differences between the tenant for life and the trustees by reference to the Court (s. 44). Section 48 provides for the constitution of the Land Commissioners.
5. The remaining sections extend the provisions of the Act so as to include every possible case. Sections 50-56 deal with attempts to evade its provisions; s. 58 gives to a number of other limited owners therein defined the powers of a tenant for life; ss. 59-62 provide for the exercise of the powers by

others in the event of the tenant for life being incapable of exercising them. By section 63 a settlement of land by way of trust for sale is brought within the limits of the Act.

Such is briefly the general effect of the Act. It will be seen that it not only confers powers on the tenant for life, but it goes on to declare that it shall not be possible for him not to have them. No provision defeating his estate on exercise of the powers, no ingenious device for making him substantially a tenant for life but calling him something else, will avail. A tenant for life by any other name will be a tenant for life still, and no position he can occupy, no contract he can enter into, will prevent him from availing himself of the advantages of his situation. If he should be an infant, or even if he should become lunatic, the Act has provided for the contingency; his powers will not be suspended, they will be transferred to others capable of exercising them.

The Act seems for the most part very complete and comprehensive. There are, however, one or two points upon which difficulties may not improbably arise in working out its provisions. These points it may be useful to notice beforehand. Certain powers, rights, and duties are by the Act conferred and imposed upon the trustees of the settlement, among them the important power of receiving and giving a receipt for capital money; but by s. 2, subs. 8, the trustees of the settlement are defined to be trustees with power of sale of settled land, or with power of consent to a sale, or the persons if any for the time being by the settlement declared to be trustees thereof for the purposes of this Act. Now although under settlements made previously to the commencement of the year 1883 a power of sale will generally be found to have been given to the trustees of the settlement, this power will probably in most cases be omitted in deeds drawn after the Act has come into operation. It will not then be sufficient merely to appoint trustees of the settlement; they must be declared to be trustees "for the purposes of the Act," and it seems

that the declaration must be extended to cover not only the present but all future trustees. If this declaration is omitted, which is not unlikely unless care is taken, there may be trustees of the settlement to whom money will be incautiously paid but whose receipts will not be valid discharges, or who will purport to sell and convey part of the settled land on behalf of an infant tenant for life but whose attempted exercise of those powers will some day be discovered to have been invalid.

Again difficulties are likely to be of not unfrequent occurrence wherever a tenant for life wishes to exercise his powers over an encumbered estate. Most settled estates are subject to incumbrances, such as rent-charges for widows of deceased tenants for life and portions for their younger children. From the rent-charge given to his own wife and from the portions of his own younger children the tenant for life can sell the land discharged, these being charges arising under the same settlement under which he is tenant for life, but from the rent-charge given to his mother and the portions given to his younger brothers and sisters he has no power to release the land, these persons taking under a prior settlement, viz. that made on the marriage of his father and mother. The owner of the rent-charge might be willing and competent to grant a release; but with regard to the portioners, even if these persons were willing to give up some part of their security and to release any part of the settled land which the tenant for life desired to sell, and it cannot be assumed that they would be willing, it is by no means certain or even probable that they would be competent to do so. Some might be infants, some might have married and settled their shares. In either of these events the tenant for life would be unable to sell free from incumbrances and purchasers would decline to complete. It is true that under s. 5 the tenant for life has power to transfer

* The same remarks apply to the power of managing estates during a minority given to the trustees by s. 42 of the Conveyancing and Law of Property Act 1881.

the incumbrance to any other part of the settled land in exoneration of the part sold ; but this must be done with the consent of the incumbrancer which can no more be obtained in the one case than in the other. With regard to a mortgage less difficulty is likely to arise, because mortgages are more readily paid off or transferred, but charges for portions frequently remain unraised for many years, the portioner receiving interest out of the yearly rents and profits of the estate. In order to meet this difficulty so far as may be, a suggestion has been ventured in Precedents XC. and XCI. that the trustees of the term for raising portions should with a view to a sale or other dealing with part of the settled land by the tenant for life under the Act, be invested with a power of releasing that part from any portion not actually raised without the concurrence of the portioner and without receiving any of the purchase money. Trustees have not generally been found to err on the side of temerity and such a power is one which it is conceived might be entrusted to them without much fear of its being used to the prejudice of their cestuis que trust. If preferred the power might be given to the tenant for life in addition to his powers under the Act ; see s. 57. Settled estates even allowing for mortgages upon them are generally of large value compared with the amount of the portions, and it would facilitate sales if these incumbrances could more readily be discharged. Moreover it must be remembered that the money produced by the sale will remain subject to the settlement, will be converted into securities or back again into land, or will be expended in improvements upon the remaining lands, by which the incumbrancers will benefit as well as the tenant for life and his successors.

On the whole there is a general expectation, even among those who think the Act does not go far enough, that its provisions will be largely used and that the number of transactions under it will be great. It will be important to take care that its directions are strictly complied with, and accordingly a considerable number of precedents have

been added to the first part of this book specially adapted for use under the Act.

Two other Acts of this year remain to be noticed, the Married Women's Property Act and the Bills of Sale Act. The former completely changes the status of the married woman, but it does not seem to affect or to be intended to affect the existing form of a marriage settlement, except indirectly and to a small extent. It will have its operation chiefly outside the limits of conveyancing by providing women who do not make settlements upon marriage with a sort of parliamentary settlement. In passing the Act relating to bills of sale, the object of the legislature appears to have been to prevent anyone from availing himself of that last plank between him and bankruptcy. The object is laudable for the plank is certain to carry him into deeper water. But other attempts have before now been made to regulate the terms on which one man may borrow from another; and these have only had the effect of rendering the terms harsher for the borrower, until they have been repealed. The present Act contains in its schedule the form of a bill of sale, in accordance with which every bill of sale must be made or it will be void. This prescribed form is intelligible only on reference to the Act, if then; so that the measure is somewhat stringent in its provisions.

Since the Solicitors Remuneration Act 1881 came into operation a general order under it has been issued regulating the remuneration of solicitors in matters of conveyancing. The Act and order will be found at the end of the book.

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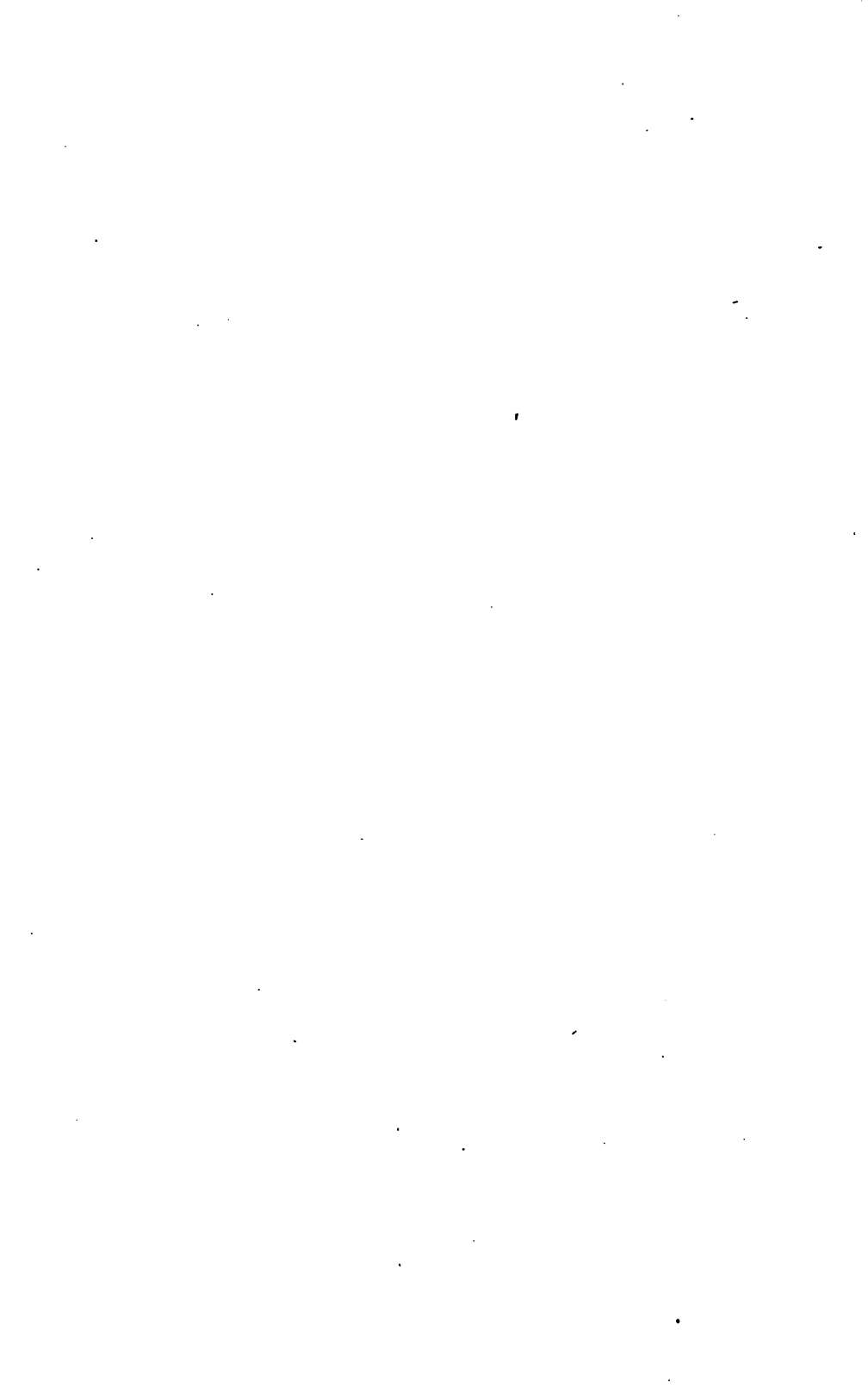
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PART I.

PRECEDENTS IN CONVEYANCING.



PRECEDENTS IN CONVEYANCING.

I.

CONDITIONS of SALE of FREEHOLD, COPYHOLD and LEASEHOLD *property in LOTS (a).*

1. THE highest bidder for each lot shall be the purchaser, *Biddings.*
and if any dispute shall arise as to the bidding for any
lot, such lot shall be put up again. No person shall
advance less than £10 at any bidding, or retract his
bidding. The vendors reserve the right to bid for each
lot, and to withdraw all or any of the lots without de-
claring the reserve price. Every purchaser shall imme- *Deposit.*
diately after the sale pay to the auctioneer a deposit of
£10 per cent. on his purchase money and sign the subjoined
agreement.

2. The timber and timberlike trees, pollards, saplings *Timber.*
and underwood upon each lot down to the value of 1s.
per stick inclusive, shall be paid for by the purchaser at a
price to be fixed by the valuation of two valuers, one to
be appointed by the vendors and the other by the pur-
chaser, or of an umpire to be appointed by the valuers
before they proceed to the valuation; and if either party

(a) These conditions can be adapted of tenure, whether in one or more
to the sale of property of any kind lots.

Conditions of Sale.

shall neglect to appoint a valuer or to give notice of his appointment to the other party for the space of fourteen days from the day of sale, or if the valuer appointed by either party shall neglect to act, then the valuer appointed by the other party shall make a valuation alone, and his valuation shall be final and binding on both parties.

Abstract.

3. Within ——— days from the day of sale the vendors shall deliver to every purchaser or to his solicitor an abstract of the title to the lot or lots purchased by him (b).

Requisitions.

4. Within twenty-one days from the receipt of the abstract a statement in writing of all objections and requisitions, if any, arising on the title or abstract or particulars, or any matter appearing therein respectively, shall be sent to Messrs. ——— the solicitors of the vendors; and within fourteen days from the delivery to any purchaser of any additional abstract or information or replies, such purchaser shall send to the same solicitors a statement in writing of his further objections and requisitions, if any, in respect of such additional abstract or information or replies. Subject to such objections and requisitions so sent the purchaser shall be considered to have accepted the title, and in this respect time shall be of the essence of the contract. If any objection or requisition shall be insisted upon by a purchaser which the vendors shall be unable or unwilling to remove or comply with, the vendors shall be at liberty at any time, and notwithstanding any previous negotiation or litigation, to rescind the sale to such purchaser by notice in writing; and in that event the purchaser shall receive back his deposit without interest, but shall have no claim on the vendors for the expense of investigating the title or for other expenses or for compensation.

Title, &c.

5. The title to the several lots shall commence as follows: The title to Lots 1, 2 and 3 with Indentures of Lease and Release dated &c. The title to Lots 4 and 5 in part with an Indenture dated &c. and in part with an

(b) A purchaser of more than one the common title, see Conveyancing
lot can only require one abstract of Act, 1881, s. 3, subs. 7, p. 246.

Admission dated &c. (c). The purchasers of Lots 4 and 5 Identity. respectively shall not require the vendors to distinguish what part of such lots is of freehold and what part of copyhold tenure. No purchaser shall be entitled to any proof of the identity of the property purchased by him with the description contained in the documents relating thereto, except a statutory declaration to be made at the expense of the purchaser by X. of &c. or some other competent person that the same property has been held for the last twenty years consistently with the title shown. The property comprised in all the aforesaid lots is sold subject to such chief, quit, and other rents, rights of way, and other rights and easements, if any, as may exist.

6. All deeds or other documents dated twenty years or upwards prior to the day of sale shall be conclusive evidence (d) of the facts and matters recited or stated therein or to be implied therefrom. Recitals to be evidence.

7. The several leases and underleases aforesaid shall be conclusive evidence (d) of the title of the respective lessors to grant the same, and the production of the receipt for the last rent accrued due before the completion of the purchase shall be conclusive evidence of the due performance of the lessees' covenants or of the waiver of any breach of any such covenant (e) down to the time of the completion of the purchase. The purchasers of any leasehold property Rent and covenants in leases.

(c) The purchaser is precluded by the Conveyancing Act, 1881, s. 3, subs. 3, from requiring the production of or making any requisition with respect to the prior title. With regard to special conditions of sale to guard against known flaws in the title it should be remembered that the best policy is to state the facts plainly and to provide against the purchaser making any objection in respect of them. Conditions of sale tending to mislead the purchaser or forcing him to accept a bad title, without first bringing to his know-

ledge what the flaw is, are viewed with disfavour by the Court, see *Re Banister*, L. R. 12 Ch. D. 131, in which case it was laid down by the Court of Appeal that a condition of sale is bad as misleading—1. If it requires the purchaser to assume what the vendor knows to be false. 2. If it states that the state of the title is not accurately known when in fact it is known to the vendor.

(d) See note (d) to Conveyancing Act, 1881, s. 3, subs. 4, 5, p. 244.

(e) See *Laurie v. Lees*, L. R. 7 Ap. Ca. 24.

shall enter into covenants with the vendors to pay the rent and observe the covenants reserved by and contained in the lease, and to indemnify the vendors against such rent and covenants.

Expenses
of stamp-
ing, &c.

8. The expense of stamping such documents, if any, as may be unstamped or insufficiently stamped [and of registering such documents, if any, as ought to be registered], shall be borne by the purchaser requiring the same.

Errors and
compensa-
tion.

9. The property is believed to be correctly described in the particulars. Any error or omission therein shall not annul the sale, and no compensation in respect thereof shall be allowed on either side [or but compensation shall be made in respect thereof by the vendors or the purchaser, as the case may be, the amount of such compensation to be fixed by the decision of two referees, one to be appointed by the vendors and the other by the purchaser, or of an umpire to be appointed by the referees before they proceed to the reference: but if either party shall neglect to appoint a referee for the space of ——— days after notice in writing to do so shall have been given by the other party, or if the referee appointed by either party shall neglect to act, then the referee appointed by the other party shall make a decision alone, and his decision shall be final and binding on both parties. No claim for compensation shall be made after completion of the purchase (*f*)].

Comple-
tion of
purchase.

10. Every purchaser shall pay the remainder of his purchase money (including the amount of the aforesaid valuation), and the purchase shall be completed on the ——— day of ——— at the office of the vendors' solicitors, and thereupon the vendors shall execute proper assurances to the respective purchasers; such assurances to be prepared by and at the expense of the respective purchasers. [The vendors being trustees (*or* mortgagees) selling under

(*f*) See decisions of M. R. in *Turner v. Skelton*, L. R. 13 Ch. D. 130, and V.C. Malins in *Manson v. Thacker*, 7 Ch. D. 620; *Beesley v. B.* 9 Ch. D. 103; *Allen v. Richardson*, 13 Ch. D. 524.

a power of sale will enter into no covenants for title other than the usual covenant that they have not incumbered; and the concurrence of the persons beneficially interested shall not be required (g)]. Every purchaser shall from the said ——— day of ——— be entitled to the possession or to the receipt of the rents and profits of the property purchased by him, and all outgoing up to that day shall be paid by the vendors. If from any cause whatsoever the purchase of any lot shall not be completed on the said ——— day of ——— the purchaser of such lot shall pay to the vendors interest at the rate of £5 per cent. per annum on the remainder of his purchase money (including the amount of the valuation aforesaid) from that day until the purchase shall be completed.

11. Such of the documents of title in the vendors' possession as relate to more than one lot shall, if all the lots are sold at this present sale, be delivered to the purchaser of Lot 1 [or to the purchaser of the largest part in value of the lots to which the same relate], and he shall give to the purchasers of the others of such lots at their expense an acknowledgment in writing of their right to production and to delivery of copies of such documents, and an undertaking in writing for the safe custody thereof. If all the lots to which any documents of title relate are not sold, such documents shall be retained by the vendors, who will then give the acknowledgment [and undertaking] aforesaid at the expense of the person requiring the same (h).

12. If any purchaser shall fail to comply with these conditions his deposit money shall be forfeited to the vendors, and they shall be at liberty to resell the property sold to him either by public auction or by private contract, and the deficiency, if any, arising on such second sale together with all expenses attending the same shall be made good by the purchaser at this present sale, and shall

(g) If the vendor is a tenant for life selling under the Settled Land Act, 1882, the first part of this clause will be as in Prec. III., cl. 9,

p. 9, *mutatis mutandis*.

(h) See Conveyancing Act, 1881, s. 9, and note thereto, p. 259.

Purchaser
making
default.

Conditions of Sale.

be recoverable by the vendors as and for liquidated damages, and it shall not be necessary for them previously to tender a conveyance (i).

(i) The Vendor and Purchaser Act, 1874, 37 & 38 Vict. c. 78, enacts—

1. In the completion of any contract of sale of land made after the thirty-first day of December one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required.

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be

taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Fourth. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

4. The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust. (*Repealed in cases of death*

II.

AGREEMENT for SALE and PURCHASE of FREEHOLDS.

AN AGREEMENT made the ——— day of ———
Between A. of &c. (hereinafter called the vendor) of the
one part and P. of &c. (hereinafter called the purchaser) of
the other part, WHEREBY IT IS AGREED as follows:

1. The vendor shall sell and the purchaser shall purchase
for the sum of £ ——— the fee simple in possession free
from incumbrances of ALL &c. (*parcels*), with the appur-
tenances. (*Insert such other conditions from Precedent*
I. as may be necessary) (*k*). IN WITNESS &c.

after the commencement of the Convey-
ancing Act, 1881; see s. 30, p. 280).

5. Upon the death of a bare trustee
of any corporeal or incorporeal
hereditament of which such trustee
was seised in fee simple, such here-
ditament shall vest like chattel real
in the legal personal representative
from time to time of such trustee.
(*Repealed in cases of death after the*
commencement of the Conveyancing
Act, 1881; see s. 73, p. 308).

6. When any freehold or copyhold
hereditament shall be vested in a
married woman as a bare trustee,
she may convey or surrender the
same as if she were a feme sole.

7. (*Repealed as from the date at*
which it came into operation; see Con-
veyancing Act, 1881, s. 73, p. 308).

8. Where the will of a testator
devising land in Middlesex or York-
shire has not been registered within
the period allowed by law in that
behalf, an assurance of such land to
a purchaser or mortgagee by the
devisee or by some one deriving title
under him shall, if registered before,
take precedence of and prevail over
any assurance from the testator's
heir-at-law.

9. A vendor or purchaser of real
or leasehold estate in England, or

their representatives respectively,
may at any time or times and from
time to time apply in a summary
way to a judge of the Court of
Chancery in England in chambers,
in respect of any requisitions or ob-
jections, or any claim for compensa-
tion, or any other question arising
out of or connected with the con-
tract, (not being a question affecting
the existence or validity of the con-
tract), and the judge shall make
such order upon the application as
to him shall appear just, and shall
order how and by whom all or any
of the costs of and incident to the
application shall be borne and paid.

A vendor or purchaser of real or
leasehold estate in Ireland, or their
representatives respectively, may in
like manner and for the same pur-
pose apply to a judge of the Court
of Chancery in Ireland, and the
judge shall make such order upon
the application as to him shall
appear just, and shall order how
and by whom all or any of the costs
of and incident to the application
shall be borne and paid.

10. This Act shall not apply to
Scotland, and may be cited as the
Vendor and Purchaser Act, 1874.

(*k*) Where the property consists

Agreement for Sale by Tenant for Life.

III.

AGREEMENT for the SALE of FREEHOLDS by a TENANT for LIFE under the SETTLED LAND ACT, 1882, with variations where the purchaser is also a tenant for life.

AN AGREEMENT made the ——— day of ——— Between A. of &c. tenant for life in possession under an Indenture of Settlement dated &c. hereinafter called the vendor of the one part and P. of &c. [tenant for life in possession under the will of J. S. dated &c.] hereinafter called the purchaser of the other part, WHEREBY IT IS AGREED as follows:

Parcels.

1. The vendor as such tenant for life as aforesaid shall sell under the provisions of the Settled Land Act, 1882, and the purchaser [as such tenant for life as aforesaid] shall purchase [under the provisions of the same Act] for the sum of £—— the fee simple in possession free from incumbrances (except as hereinafter mentioned) of ALL &c. (*parcels*), which hereditaments are part of the hereditaments comprised in the aforesaid Indenture of Settlement.

2, 3, 4 and 5, as in Prec. I. *mutatis mutandis*.

Special provision as to incumbrance.

6. The hereditaments hereby contracted to be sold are, together with other hereditaments of which the said A. is also tenant for life in possession under the said Indenture of Settlement, which other hereditaments are of large value, subject to a term of 1000 years created by an Indenture dated &c. and now vested in E. and F. as trustees for the purpose of raising the sum of £10,000 as the portions of certain persons of whom some have married and settled their shares and others are infants. The vendor has no power to sell the said hereditaments hereby

of buildings insured against fire by the vendor, it will be well to insert a condition providing that any insurance moneys received by him before completion of purchase shall

be handed over to the purchaser. See *Rayner v. Preston*, L. R. 14 Ch. D. 297, *affd.* 18 Ch. D. 1; *Casellain v. Preston*, 8 Q. B. D. 613.

contracted to be sold discharged from the said term of the trusts thereof; but the purchaser shall be satisfied with a declaration by the vendor charging so far as he lawfully can the said sum of £10,000 on the said other hereditaments in exoneration of the hereditaments hereby contracted to be sold (*l*).

7 and 8 as in Prec. I. cl. 6 and 7.

9. The purchase shall be completed on the ——— day of ——— at the office of the vendor's solicitors. The purchase money (including the amount of the aforesaid valuation) shall be paid to B. C. and D. the present trustees of the said Indenture of Settlement, [or into Court to the credit of In the matter of an Indenture of Settlement dated &c. under which A. is tenant for life in possession and of the Settled Land Act, 1882 (*m*)], and upon such payment being made the vendor shall under the provisions of the said Settled Land Act, 1882, execute a proper assurance for conveying the said hereditaments to the purchaser [or to the uses of the said will of the said J. S.], subject as is hereinbefore provided. The said B. C. and D. will join in such assurance for the purpose of receiving and acknowledging the receipt of the purchase money and will give the usual covenant by trustees against incumbrances.

10. The vendor will retain possession of all documents of title and will give to the purchaser an acknowledgment in writing of his right to production and to delivery of copies thereof and an undertaking in writing for safe custody thereof. IN WITNESS &c.

IV.

POWER of ATTORNEY to execute a deed.

KNOW ALL MEN by these presents that I A. of &c.

(*l*) See note (*q*) to Prec. XXV., p. 42, and note to s. 5 of the Settled Land Act, 1882, p. 334. See also Prec. XC., p. 189, Prec. XCL, p. 199. (*m*) See note to sect. 22, subs. 1, of Settled Land Act, 1882, p. 347.

Statutory Declaration.

do hereby appoint X. of &c. to be my attorney in my name and on my behalf to receive from P. of &c. (*purchaser*) the sum of £——, being the price agreed to be paid by him to me for the purchase of a certain freehold messuage and hereditaments known as ———, situate at &c. and all interest (if any) thereon, and to give an effectual receipt for the same. AND thereupon in my name and as my act and deed to sign seal and deliver [a certain Indenture already prepared and engrossed and expressed to be made between myself the said A. of the one part and the said P. of the other part, being a conveyance of the said hereditaments to the use of the said P. his heirs and assigns, and also all other] such deed or deeds as the said X. shall think necessary or proper for conveying and assuring the said hereditaments to the said P. and his heirs or as the said P. shall direct: AND ALSO to do all such other things as the said X. shall deem necessary or proper in relation to the aforesaid purchase. AND I hereby undertake to ratify and confirm all that my said attorney shall do by virtue of these presents. IN WITNESS &c. (n).

V.

STATUTORY DECLARATION *as to* IDENTITY *of* PARCELS.

I X. of &c. do solemnly and sincerely declare as follows:

I am a —— and have for the period of —— years past resided at —— aforesaid and have during the whole of that period [or for the last —— years] been well acquainted with the freehold messuage or dwelling house situate at &c. and known as &c. which messuage with the yard and garden adjoining has been sold by the trustees of the will of A. of &c. the late owner thereof to P. of &c. by the description contained

(n) See Conveyancing Act, 1881, ss. 46, 47, 48, p. 293.

in an Indenture expressed to be made between the said trustees of the one part and the said P. of the other part and intended to be executed as an assurance of the said messuage and hereditaments to the said P. which description I have carefully read over previously to making this declaration, and I verily believe that the several parcels therein described comprise the whole of the said messuage and hereditaments belonging to the said A. and that the said A. and his father who died in the year ——— have during the whole of the aforesaid period of ——— years [or during the last ——— years] up to the time of the death of the said A. been in the occupation or in possession or receipt of the rents and profits of the said messuage and hereditaments. AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835 (o).

VI.

BOND of INDEMNITY to a PURCHASER where the title to a portion of the property conveyed is doubtful (p).

KNOW ALL MEN by these presents that I A. of &c. (*vendor*) am bound to P. of &c. (*purchaser*) in the sum of £——— (*the value of the portion of the property the title to which is doubtful*) to be paid to the said P. his executors administrators or assigns, for which payment I bind myself my heirs executors and administrators by these presents. SEALED with my seal. DATED this ——— day of ———.

WHEREAS by an Indenture bearing even date with these presents and expressed to be made between the said

Convey-
ance to
purchaser.

(o) See Conveyancing Act, 1881, s. 68, p. 305.

(p) A bond such as this would be given where the vendor, being himself satisfied that no liability would ever attach, is afraid that any condition of sale guarding against the

flaw in the title would alarm intending purchasers and prejudice the sale, or where the flaw is discovered after the contract, and the purchaser refuses to complete without such an indemnity.

Bond of Indemnity to a Purchaser.

Reason for
indemnity.

Agree-
ment for
indemnity.

A. of the one part and the said P. of the other part the the said A. for the consideration therein mentioned granted unto and to the use of the said P. his heirs and assigns the freehold farm and hereditaments known as Blackacre Farm situate &c. in the said Indenture more particularly described, AND WHEREAS &c. (*recite the circumstances under which the title to a portion of the property is doubtful*), AND WHEREAS in consideration of the completion of the purchase of the said Blackacre Farm it was agreed that the said A. should enter into the above-written bond for the purpose of indemnifying the said P. against any claim by (*state the possible claimants*) or their representatives, NOW THE CONDITION of the above-written bond is such that if the said (*possible claimants*) or their representatives shall make no claim against the said P. his heirs or assigns in respect of the matters aforesaid [within the space of ——— years from the date hereof], or if the said A. his heirs executors or administrators shall at all times hereafter [*or within the said space of ——— years*] keep indemnified the said P. his heirs and assigns against all actions and proceedings claims and demands on the part of the said (*possible claimants*) or their representatives in respect of the matters aforesaid, THEN and in either of such cases the above-written bond shall be void and of no effect, otherwise the same shall be and remain in full force and virtue.

VII.

CONVEYANCE of FREEHOLDS.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*vendor*) of the one part and P. of &c.
(*purchaser*) of the other part, [WHEREAS the said A. is
seised (*q*) for an estate of inheritance in fee simple in
possession free from incumbrances of the freehold messuage
and hereditaments hereinafter granted, AND WHEREAS
the said A. has agreed with the said P. for the sale to
him of the said messuage and hereditaments and the
inheritance thereof in fee simple in possession free from
incumbrances for the sum of £ ———, NOW THIS
INDENTURE] WITNESSETH that [in pursuance of
the said agreement and] in consideration of the sum of
£ ——— now paid by the said P. to the said A., The
receipt whereof the said A. doth hereby acknowledge,
He the said A. as beneficial owner (*r*) doth hereby grant
unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE
AND TO HOLD the premises hereby granted UNTO AND
TO THE USE of the said P. his heirs and assigns. IN
WITNESS &c.

Seisin of
vendor.

Contract
for sale.

Grant of
freeholds.

VIII.

COVENANT to SURRENDER COPYHOLDS.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*vendor*) of the one part and P. of &c.

(*q*) This conveyance may be shortened by omitting the words within brackets. Where the vendor is seised in fee it is not necessary to recite to that effect, but under the Vendor and Purchaser Act, 1874, s. 2, see p. 6, the recital after 20 years becomes evidence, and the deed may then furnish a useful root of title. *Bolton v. London School Board*, L. R. 7 Ch. D. 766.
(*r*) See Conveyancing Act, 1881, s. 7, subs. 1, A., p. 251.

*Covenant to surrender Copyholds.*Seisin of
vendor.Contract
for sale.Covenant
to surren-
der copy-
holds.Covenants
for title.Right to
surrender.

(*purchaser*) of the other part, WHEREAS the said A. is seised (*s*) for an estate of inheritance to him and his heirs according to the custom of the manor of _____ in the county of _____ free from incumbrances of the copyhold tenement and hereditaments hereinafter covenanted to be surrendered, AND WHEREAS the said A. has agreed with the said P. for the sale to him of the said copyhold hereditaments and the customary inheritance thereof in possession free from incumbrances for the sum of £——, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. doth hereby covenant (*t*) with the said P. that he the said A. or his heirs and all other necessary parties if any will at the cost of the said P. his heirs or assigns forthwith surrender or cause to be surrendered into the hands of the lord of the manor of _____ according to the custom of the said manor ALL &c. (*parcels*), To THE USE of the said P. his heirs and assigns, To be holden at the will of the lord according to the custom of the said manor by and under the rents fines suits and services therefor due and of right accustomed. AND (*u*) the said A. doth hereby covenant with the said P. that notwithstanding any act deed or thing by him the said A. [or by any of his ancestors or testators (*x*)] done executed or knowingly suffered he the said A. now hath good right to surrender the copyhold hereditaments and premises hereby covenanted to be surrendered to the use of the said P. his heirs and assigns in

(*s*) See note (*q*), p. 13.

(*t*) See Conveyancing Act, 1881, ss. 58, 59, p. 298.

(*u*) See Conveyancing Act, 1881, s. 7, subs. 5, and note to that subsection, p. 258, giving reasons why the covenants for title are inserted here. If it be considered that the provisions of that Act are sufficient

and satisfactory, the covenants for title can be omitted, and the words "as beneficial owner" inserted in the testatum.

(*z*) These words should be omitted where the vendor acquired the property otherwise than by descent or devise.

manner aforesaid: AND that it shall be lawful for the said P. his heirs and assigns at all times hereafter peaceably and quietly to enter upon possess and enjoy the said hereditaments and premises and to receive the rents and profits thereof without any eviction claim or demand whatsoever by him the said A. or any person or persons lawfully claiming from under or in trust for him [or any of his ancestors or testators]: AND that free and discharged from or otherwise by the said A. his heirs executors or administrators sufficiently indemnified against all estates incumbrances claims and demands created or occasioned by him the said A. [or any of his ancestors or testators] or any person or persons lawfully claiming from under or in trust for him [or them]: AND further that he the said A. and his heirs and all persons having or lawfully claiming any estate right title or interest in or to the said hereditaments and premises or any of them from under or in trust for him [or any of his ancestors or testators] will at all times hereafter at the cost of the said P. his heirs or assigns do and execute or cause to be done and executed all such deeds things and assurances for further and better assuring the said hereditaments and premises to the use of the said P. his heirs and assigns in manner aforesaid as may be reasonably required. IN WITNESS &c.

Quiet enjoyment.

Free from incumbrances.

Further assurance.

IX.

SURRENDER of COPYHOLDS.

The Manor of _____ } BE IT REMEMBERED
 in the County of _____ } that on the ____ day of ____
 A. of &c. came before S. of &c. the Steward of the said Manor and in consideration of the sum of £_____ paid to him the said A. by P. of &c., the receipt whereof the said A. doth hereby acknowledge, did out of Court surrender into the hands of the Lord of the Manor by the hands and acceptance of the said S. according to the custom of the said Manor ALL &c. (*parcels*), to which

Assignment of Leaseholds.

hereditaments and premises the said A. was at a Court held for the said Manor on the ——— day of ——— admitted tenant, To THE USE of the said P. his heirs and assigns at the will of the lord according to the custom of the said Manor at and under the rents fines suits and services therefor due and of right accustomed.

This surrender was taken and accepted
the day and year first above written by me,

S.

Steward of the said Manor.

X.

ASSIGNMENT of LEASEHOLDS.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*vendor*) of the one part and P. of &c.
Recital of (*purchaser*) of the other part, WHEREAS by an Indenture
lease. of Lease dated &c. and made between (*lessor*) of the one
part and L. (*lessee*) of the other part ALL &c. (*parcels*
from the lease) with the appurtenances were demised by
the said (*lessor*) unto the said L. his executors adminis-
trators and assigns for the term of ——— years from the
——— day of ———, at the yearly rent of £——— and
subject to the covenants and conditions therein contained
and on the part of the lessee to be observed and performed,
AND WHEREAS by divers mesne assignments and acts in
the law and ultimately by an Indenture dated &c. and
made &c. the said leasehold premises were assigned to and
became vested in the said A. his executors administrators
and assigns for the residue of the said term of ———
Contract years, AND WHEREAS the said A has agreed with the
for sale. said P. for the sale to him of the said leasehold pre-
mises for the residue of the aforesaid term of ——— years
free from incumbrances for the sum of £———, NOW
THIS INDENTURE WITNESSETH that in pursu-
ance of the said agreement and in consideration of the sum
of £——— now paid by the said P. to the said A., The

receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner (x) doth hereby assign unto the said P. his executors administrators and assigns ALL that piece of land and premises comprised in and demised by the aforesaid Indenture of Lease of the ——— day of ———, To HAVE AND TO HOLD the piece of land and premises hereby assigned UNTO the said P. his executors administrators and assigns for all the residue of the said term of ——— years at the rent reserved by the said Indenture of Lease and under and subject to the covenants and conditions therein contained and on the part of the lessee to be observed and performed. AND the said P. doth hereby covenant with the said A. that he the said P. his heirs executors administrators and assigns will during the residue of the said term pay the rent reserved by the said Indenture of Lease and observe and perform the covenants and conditions therein contained and on the part of the lessee to be observed and performed, and will at all times hereafter keep indemnified the said A. his heirs executors and administrators and his and their estates and effects against the payment of the said rent and the observance and performance of the said covenants and conditions and also against all actions claims and demands for or on account of such rent covenants or conditions or in anywise relating thereto. IN WITNESS &c.

Assign-
ment of
leaseholds.

Covenant
by pur-
chaser to
pay rent,
&c.

XI.

CONVEYANCE of FREEHOLDS and COVENANT to surrender COPYHOLDS (y).

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*vendor*) of the one part and P. of &c.

(x) See Conveyancing Act, 1881, s. 7, subs. 1, A. & B., pp. 251, 253.

(y) The assignment of Leaseholds Prec. X. can be incorporated with this precedent by adding the re-

citals showing title to the Leaseholds, a third operative part, and the covenant by the purchaser to indemnify the vendor against rent &c.

Seisin of freeholds.	(<i>purchaser</i>) of the other part, WHEREAS the said A. is seised (z) for an estate of inheritance in fee simple in possession free from incumbrances of the freehold messuage
Seisin of copyholds.	and hereditaments hereinafter granted, AND WHEREAS the said A. is also seised for an estate of inheritance to him and his heirs according to the custom of the manor of _____ in the county of _____ free from incumbrances of the copyhold tenement and hereditaments
Contract for sale.	hereinafter covenanted to be surrendered, AND WHEREAS the said A. has agreed with the said P. for the sale to him of the said freehold hereditaments and the inheritance thereof in fee simple in possession free from incumbrances, and of the said copyhold hereditaments and the customary inheritance thereof in possession free from incumbrances for the sum
Apportionment of purchase money.	of £——, AND WHEREAS for the purposes of the Stamp Acts (a) the sum of £—— has been apportioned as the price of the said freehold hereditaments and the sum of £—— as the price of the said copyhold hereditaments, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— (<i>total amount</i>) now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner
Grant of freeholds.	doth hereby grant unto the said P. and his heirs ALL &c. (<i>parcels of freeholds (b)</i>), To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration
Covenant to surrender copyholds.	aforesaid He the said A. doth hereby covenant with the said P. that he the said A. or his heirs and all other necessary parties if any will at the cost of the said P. his

(z) See note (q), p. 13.

(a) 33 & 34 Vict. c. 97, ss. 76, 77.

(b) If the freehold cannot be certainly distinguished from the copyhold hereditaments, describe the parcels as, "All such part as is of

the nature of freehold of and in ALL &c. (*parcels*)," and in the covenant to surrender as, "All such part as is of the nature of copyhold of and in ALL the hereditaments hereinbefore described."

heirs or assigns forthwith surrender or cause to be surrendered into the hands of the lord of the manor of _____ according to the custom of the said manor ALL &c. (*copyhold parcels*) TO THE USE of the said P. his heirs and assigns, To be holden at the will of the lord according to the custom of the said manor by and under the rents fines suits and services therefor due and of right accustomed. (*Covenants for title in respect of the copyholds, see p. 14*). AND the said A. hereby gives to the said P. *Deeds.* an acknowledgment of the right of the said P. to production of the documents mentioned in the schedule hereunder written and to delivery of copies thereof and an undertaking for safe custody thereof (c). IN WITNESS &c.

The schedule to the above-written Indenture.

(*List of Deeds.*)

XII.

APPOINTMENT and CONVEYANCE of FREEHOLDS to Purchaser to uses to bar DOWER (d).

THIS INDENTURE made the _____ day of _____ Between A. of &c. (*vendor*) of the 1st part P. of &c. (*purchaser*) of the 2nd part and X. of &c. of the 3rd part, WHEREAS by an Indenture dated &c. and made between B. & C. of the 1st part the said A. of the 2nd part and Y. of the 3rd part the cottage land and hereditaments herein-after described and intended to be hereby appointed and granted were assured to such uses and in such manner as the said A. should by any deed or deeds appoint and in

Recital of conveyance to vendor to uses to bar dower.

(c) See Conveyancing Act, 1881, s. 9, p. 259. The acknowledgment and undertaking need not be given by deed. They must be in writing, and if preferred may be by a separate document.

(d) With regard to persons married since the 1st of January, 1834, the Dower Act, 3 & 4 Will. IV. c.

105, enacts, s. 4. "No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by his will." Therefore in conveyances to such persons the declaration against dower is unnecessary and ought to be omitted.

Appoint-
ment.

Grant.

default of and subject to such appointment to the use of the said A. and his assigns during his life without impeachment of waste with a limitation to the use of the said Y. and his heirs during the life of the said A. in trust for the said A. and his assigns with remainder to the use of the said A. his heirs and assigns for ever, AND WHEREAS &c. (*recite contract for sale to P., see p. 13*), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the aforesaid Indenture of the —— day of —— and of all other powers if any enabling him in this behalf doth hereby appoint that ALL AND SINGULAR the cottage land and hereditaments hereinafter described and intended to be hereby granted shall henceforth go and be to the uses and upon the trusts hereinafter declared of and concerning the same (e). AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid He the said A. as beneficial owner doth hereby grant unto the said P. and his heirs ALL &c. (*parcels*), All which hereditaments are more particularly described and delineated in the map drawn on the —— skin of these presents and thereon coloured green, To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO the said P. and his heirs to the uses and upon the trusts hereinafter declared of and concerning the same. AND IT IS HEREBY AGREED AND DECLARED that the appointment and grant hereinbefore respectively contained shall operate and enure

(e) Where it is desired simply to convey to the purchaser in fee X. is an unnecessary party, and one operative part is sufficient, thus: "He the said A. as beneficial owner doth hereby appoint and by virtue of his estate and interest doth hereby

grant unto the said P. and his heirs ALL &c. (*parcels*), To HAVE AND TO HOLD the hereditaments and premises hereby appointed and granted UNTO AND TO THE USE of the said P. his heirs and assigns."

TO SUCH USES as the said P. shall from time to time by ^{Uses.} deed appoint, And in default of and subject to such appointment TO THE USE of the said P. and his assigns during his life without impeachment of waste, And after the determination of that estate by any means in his lifetime TO THE USE of the said X. and his heirs during the life of the said P. In trust for the said P. and his assigns, And after the determination of the estate so limited to the said X. and his heirs TO THE USE of the said P. his heirs and assigns. IN WITNESS &c.

XIII.

CONVEYANCE of FREEHOLDS by MARRIED WOMAN *not entitled for her separate use (f).*

THIS INDENTURE made the ——— day of ——— Between H. of &c. and W. his wife of the one part and P. of &c. (*purchaser*) of the other part, WHEREAS J. S. late of ——— deceased by his last will dated &c. and proved &c. gave and devised all his real estate whatsoever and wheresoever unto his daughter the said W. and her heirs, AND WHEREAS the said J. S. died on the ——— day of ———, AND WHEREAS the said W. on the ——— day of ——— intermarried with and is now the wife of the said H. but no settlement or agreement for a settlement has been made either before or since their marriage, AND WHEREAS the said H. and W. his wife have agreed with the said P. for the sale to him in fee simple in possession free from incumbrances of the hereditaments hereinafter granted being the hereditaments devised by the said will of the said J. S. as aforesaid for the sum of £——, NOW THIS INDENTURE WITNESSETH

Recitals showing the title of the wife.

Contract for sale.

(f) The Married Women's Property Act, 1882, sect. 5, see p. 149, does not apply where the woman married before the 1st of January 1883, and her title to the property accrued before that date. This deed

must be acknowledged by her pursuant to the Abolition of Fines and Recoveries Act, 3 & 4 Will. IV. c. 74, s. 77, and the Conveyancing Act, 1882, s. 7.

Grant of
freeholds.

that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said H. and W. his wife, The receipt whereof the said H. and W. do hereby acknowledge, She the said W. by the direction of the said H. as beneficial owner doth hereby grant, And he the said H. as beneficial owner (g) doth hereby grant unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns. IN WITNESS &c.

XIV.

CONVEYANCE of FREEHOLDS by MARRIED WOMAN
entitled for her SEPARATE USE (h).

Title of
married
woman.Contract
for sale.Grant of
freeholds.

THIS INDENTURE made the —— day of —— Between W. the wife of A. of &c. of the one part (i) and P. of &c. (*purchaser*) of the other part, WHEREAS &c. (*recite the title of W. to the property intended to be conveyed, showing that under the settlement or under the Married Women's Property Act, 1882, she is entitled for her separate use*), AND WHEREAS the said W. has agreed with the said P. for the sale to him of the said hereditaments in fee simple in possession free from incumbrances for the sum of £——, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said W., The receipt whereof the said W. doth hereby acknowledge, She the said W. as beneficial owner doth hereby grant unto the said P. and his heirs

(g) Sect. 7, subs. 3 of the Conveyancing Act, 1881, provides for the wife conveying "as beneficial owner," thereby implying covenants on her part which it was not usual for her to give before the passing of the Act. For the reasons given in the note to that subsection, p. 257,

the conveyance given above has been framed under subs. 2.

(h) See Married Women's Property Act, 1882, s. 1, subs. 1, p. 148.

(i) If the legal estate be outstanding in trustees, they of course should join in the conveyance.

ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns. IN WITNESS &c.

XV.

CONVEYANCE of FREEHOLDS by two TENANTS in COMMON to a SUB-PURCHASER.

THIS INDENTURE made the ——— day of ——— Between A. of &c. of the first part K. of &c. spinster of the second part P. of &c. (*purchaser*) of the third part and S. of &c. (*sub-purchaser*) of the fourth part, WHEREAS J. S. Will of late of ——— deceased by his last will dated &c. ^{testator.} gave and devised all his real estate whatsoever and where-soever unto his son the said A. and his daughter the said K. and their heirs in equal shares as tenants in common, AND WHEREAS the said J. S. died on the ——— day of ——— and his said will was on the ——— day of ——— ^{Death and probate.} duly proved by the said A. and K. the executors therein named in the Principal Registry of the Probate Division of the High Court of Justice, AND WHEREAS the said A. and K. have agreed with the said P. for the sale to him in fee simple in possession free from incumbrances of the hereditaments hereinafter granted being portion of the real estate of the said J. S. deceased for the sum of £1000 to be paid in manner hereinafter appearing, but no conveyance of the said hereditaments has yet been made to the said P., AND WHEREAS the said P. has agreed with the said S. for the sale to him of the same hereditaments for the sum of £1100, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreements and in consideration of the sum of £500 now paid by the said S. to the said A., The receipt whereof the said A. doth hereby acknowledge, and in consideration of the sum of £500 now paid by the said S. to the said K., The receipt whereof the said K. doth hereby acknowledge,

^{Contract for sale.}

^{Contract for sub-sale.}

Partition by Tenants in Common.

and in consideration of the sum of £100 now paid by the said S. to the said P., The payment and receipt in manner aforesaid of which said several sums of £500 £500 and £100 respectively the said P. doth hereby acknowledge, He the said A. as beneficial owner as to his share estate and interest of and in the hereditaments intended to be hereby granted, And she the said K. as beneficial owner as to her share estate and interest of and in the same hereditaments, do and each of them doth by the direction of the said P. hereby grant and he the said P. as beneficial owner doth hereby grant and confirm unto the said S. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said S. his heirs and assigns. IN WITNESS &c.

XVI.

PARTITION of FREEHOLDS by two TENANTS in COMMON,
a sum of money being paid for equality of partition.

Agree-
ment for
partition.

Money
paid for
equality.

THIS INDENTURE made the ——— day of ——— Between M. of &c. of the first part N. of &c. of the second part and X. of &c. of the third part, WHEREAS &c. (*recite the title of M. and N. to the property to be partitioned in equal moieties as tenants in common*), AND WHEREAS it has been agreed between the said M. and N. that a partition shall be made of the said hereditaments in manner herein-after appearing, and that the hereditaments comprised in the first schedule hereunder written shall be taken in severalty by the said M. and that the hereditaments comprised in the second schedule hereunder written shall be taken in severalty by the said N., and that the said N. shall pay to the said M. the sum of £—— for equality of partition, AND WHEREAS the said N. has accordingly paid the sum of £—— to the said M. as he the said M. doth hereby acknowledge, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement

and in consideration of the premises They the said M. and N. as beneficial owners as to their respective shares estates and interests of and in the said hereditaments do and each of them doth hereby grant unto the said X. and his heirs ALL &c. (*parcels*), all which hereditaments are comprised in the first and second schedules respectively hereunder written, To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO the said X. and his heirs, To THE USES following; that is to say, As to the hereditaments comprised in the first schedule hereunder written To THE USE of the said M. his heirs and assigns, And as to the hereditaments comprised in the second schedule hereunder written To THE USE of the said N. his heirs and assigns. IN WITNESS &c.

The first schedule to the above-written Indenture.

The second schedule to the above-written Indenture.

XVII.

CONVEYANCE of *undivided moiety* of INFANT OWNER in FREEHOLDS to the owner of the other moiety, being the purchaser under orders in a PARTITION ACTION.

THIS INDENTURE made the ——— day of ——— Between G. of &c. of the one part and P. of &c. (*purchaser*) of the other part, WHEREAS &c. (*recite the will of J. S. or other documents under which in the events which have happened P. is entitled to one moiety and A. an infant to the other moiety of the property*), AND WHEREAS the said A. is an infant, AND WHEREAS by a judgment of the Chancery Division of the High Court of Justice dated &c. and made by his Lordship Mr. Justice ——— in an action in which the said P. was plaintiff and the said A. was defendant, being an action for the partition or sale of the hereditaments devised by the hereinbefore recited will of the said J. S., the said P. requesting a sale, It was ordered that an inquiry should be made as to who were

Judgment
in parti-
tion action.

the persons interested in the same hereditaments and in what shares and proportions and for what estates and interests, and whether they were parties to the action, and if it should be certified that all the persons interested were parties to the action and that the said P. was interested to the extent of one moiety or upwards of and in the same hereditaments then that the same hereditaments should be sold with the approbation of the Court, and that the money to arise on such sale should be paid into Court to the credit of the aforesaid action *P. v. A.* 1882. P. No. 1. to an account to be entitled, "Proceeds of Sale of the Testator's real estate," AND WHEREAS in pursuance of the aforesaid order the Chief Clerk by his certificate made in the above-mentioned action and dated &c. certified that the plaintiff P. and the defendant A. were beneficially entitled to the hereditaments devised by the will of the said J. S. in equal moieties as tenants in common in fee simple in possession and that the said P. and A. were the only persons interested in the same hereditaments, AND WHEREAS the said hereditaments were accordingly put up for sale but no purchaser was found for the same, AND WHEREAS by an order made in the same action and dated &c. It was ordered that the said P. should be at liberty to become the purchaser of the said hereditaments at the price of £——— (*m*), And it was ordered that the said P. should pay the said sum of £——— into Court to the credit and account aforesaid, and that thereupon he should be let into possession of the said hereditaments, and that all proper parties should execute a conveyance, AND WHEREAS the said P. in accordance with the last mentioned order paid the said sum of £——— into Court to the credit aforesaid, AND WHEREAS by an order made in the same action and dated &c. after stating that it appeared that the defendant A. was an infant, It was

Chief
Clerk's
certificate.

No pur-
chaser at
auction.
Order per-
mitting
plaintiff to
purchase.

Payment
into Court.

Order de-
claring
infant a
trustee.

(*m*) In this case the plaintiff P. had the conduct of the sale, and therefore this order was necessary.

The Court will give leave to persons interested, not having the conduct of the sale; to bid, see *Seton*, p. 1007.

declared that the said A. was a trustee for the said P. within the meaning of the "Trustee Act 1850" of his share and interest in the said hereditaments, And the judge appointed the said G. the guardian of the said infant to convey the interest of the said infant in the said hereditaments to the said P. or as he should direct, And it was ordered that the said G. should convey the interest of the said A. in the said hereditaments accordingly, the conveyance to be approved by the judge, AND WHEREAS these presents have been approved by the judge as a proper conveyance of the interest of the said A. in the said hereditaments in pursuance of the aforesaid orders as appears by the certificate of the Chief Clerk hereto affixed, NOW THIS INDENTURE WITNESSETH that in pursuance of the hereinbefore recited orders and in consideration of the sum of £—— so paid by the said P. into Court as aforesaid, He the said G. in exercise of the authority conferred on him as aforesaid and for the purpose of conveying and assuring the estate and interest of the said A. doth hereby grant unto the said P. and his heirs ALL that the undivided moiety or other the part share and interest of the said A. of and in ALL &c. (*parcels*), TO HAVE AND TO HOLD the said undivided moiety or other the part share and interest and all and singular the hereditaments and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns (n). IN WITNESS &c.

And appointing guardian to convey.

Approval of deed.

XVIII.

CONVEYANCE of a REVERSIONARY SHARE in FREEHOLDS.

THIS INDENTURE made the —— day of —— Between A. of &c. (*vendor*) of the one part and P. of &c. (*purchaser*) of the other part, WHEREAS J. S. late of —— deceased by his last will dated &c. and

Recitals showing title of

(n) The order simply directs G. title on the part of the infant are to convey, and no covenants for inserted.

vendor to
a rever-
sionary
share.

Contract
for sale.

Grant of
reversion-
ary share.

proved &c. gave and devised all his real estate whatsoever and wheresoever unto and to the use of B. and C. and their heirs upon trust during the life of his niece W. the wife of H. to pay to her or otherwise to permit her to receive the rents and profits of his said real estate for her separate use without power of anticipation as therein mentioned, and after the decease of the said W. upon trust to sell the said real estate and to stand possessed of the proceeds of sale thereof after payment of all expenses In trust for such of the children of the said W. as being sons should attain the age of twenty-one years or being daughters should attain that age or marry under it, AND WHEREAS the said J. S. died on the ——— day of ———, AND WHEREAS there have been five children only of the said W. of whom three including the said A. have attained the age of twenty-one years and one is still an infant and one died an infant many years ago, AND WHEREAS the said A. has agreed with the said P. for the sale to him of his said reversionary share in the real estate devised by the said J. S. as aforesaid free from incumbrances for the sum of £——— (o), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £——— now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby grant unto the said P. and his heirs ALL THAT the one fourth share or other the share and interest to which under the said will of the said J. S. he the said A. is now or may become entitled expectant on the decease of the said W. of and in All the real estate devised by the said will of the said J. S. as aforesaid or the proceeds of sale thereof, TO HAVE AND TO HOLD the share and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns. IN WITNESS &c.

(o) 31 Vict. c. 4, enacts, s. 1, "No purchase made *bonâ fide* and without fraud or unfair dealing of any reversionary interest in real or personal

estate shall hereafter be opened or set aside merely on the ground of undervalue."

XIX.

BARGAIN and SALE of COPYHOLDS by TRUSTEES of a
WILL (p).

THIS INDENTURE made the ——— day of ———
Between B. of &c. and C. of &c. (*trustees*) of the one part and
P. of &c. (*purchaser*) of the other part, WHEREAS J. S. late Recital of will.
of &c. deceased being at the time of his decease seised for
an estate of inheritance to him and his heirs according to
the custom of the manor of ——— in the county
of ——— free from incumbrances of the copyhold
hereditaments hereinafter described and intended to be
hereby bargained and sold duly made and executed his
last will dated &c. and thereby devised all his copyhold
lands and hereditaments to such uses as the said B. and C.
or the survivor of them or other the trustees or trustee for
the time being of his said will should by deed bargain sell
or appoint and in default of and subject to any such
appointment to the use of the said B. and C. their heirs
and assigns according to the custom of the manors whereof
the same hereditaments should respectively be holden.
And the said testator declared that the said copyhold here-
ditaments were devised to the said B. and C. as aforesaid
upon trust that the said B. and C. or the survivor of them
or other the trustees or trustee for the time being of his
said will should sell the same as therein mentioned, and
he appointed the said B. and C. executors of his said
will, AND WHEREAS the said J. S. died on the ——— Death of testator and probate of will.
day of ——— without having revoked or altered his
said will which was on the ——— day of ——— duly
proved in the ——— Registry of the Probate
Division of the High Court of Justice by the said B.
and C., AND WHEREAS the said B. and C. have agreed Contract for sale.
with the said P. for the sale to him of the said copyhold
hereditaments and the customary inheritance thereof in

(p) This deed will confer on the purchaser the right to admittance without any surrender.

Bargain
and sale of
the copy-
holds.

possession free from incumbrances for the sum of £——, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, They the said B. and C. as trustees (q) in exercise of the power for this purpose given to them by the said J. S. deceased as aforesaid and of every other power enabling them in this behalf do hereby bargain sell and appoint unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby bargained and sold UNTO AND TO THE USE of the said P. his heirs and assigns according to the custom of the said manor by and under the rents fines suits and services therefor due and of right accustomed. IN WITNESS &c.

XX.

CONVEYANCE of FREEHOLDS by TRUSTEES under a Settlement with consent of TENANT for LIFE by revocation of uses and appointment to the purchaser (r).

Recital of
settlement.

THIS INDENTURE made the —— day of —— Between B. of &c. and C. of &c. (*trustees*) of the 1st part A. of &c. (*tenant for life*) of the 2nd part and P. of &c. (*purchaser*) of the 3rd part, WHEREAS by an Indenture of Settlement dated &c. and made &c. the freehold messuage and hereditaments hereinafter described and intended to be hereby appointed were with other hereditaments limited and assured unto X. and Y. and their heirs To hold the same to the uses and upon the trusts therein declared, which uses so far as they are material to be herein stated were to the use of the said A. for life

(q) See Conveyancing Act, 1881, s. 7, subs. 5, and note thereto, p. 258.

(r) The tenant for life has power under the Settled Land Act, 1882,

to sell and convey, see Prec. XXI. It may however in some cases be preferred that the conveyance should be taken from the trustees.

with remainder to the use of his first and other sons successively in tail male with divers remainders over, And the said Indenture contained a power &c. (*set out from the Settlement the power to the trustees to sell with the consent in writing of the tenant for life for the time being, the power to revoke the uses of the settlement and to appoint to purchaser, and the power to give receipts*), AND WHEREAS by an Indenture dated &c. and made &c. the said B. and C. were duly appointed to be trustees of the aforesaid Indenture of Settlement in the respective places of the said X. who was then dead and the said Y. who was desirous of being discharged from the trusts thereof, AND WHEREAS the said B. and C. have with the consent of the said A. agreed with the said P. for the sale to him of the said messuage and hereditaments in fee simple in possession free from incumbrances for the sum of £——, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, They the said B. and C. as trustees (s), in exercise of the aforesaid power for this purpose given to them by the aforesaid Indenture of Settlement and of all other powers whatsoever enabling them in this behalf do hereby with the consent and by the direction of the said A. as beneficial owner (t) testified by his execution of these presents revoke determine and make void all and every the uses trusts limitations powers provisions and agreements by and in the said Indenture of Settlement declared and contained of and concerning the hereditaments hereinafter described and intended to be hereby appointed, save so far as is necessary for effectuating and completing the appointment intended to be hereby made, AND DO HEREBY APPOINT that ALL &c. (*parcels*), All which hereditaments form part of the hereditaments comprised in the aforesaid Indenture

Recital of appointment of new trustees.

Contract for sale.

Revocation,

and appointment of uses.

(s) See Conveyancing Act, 1881, s. 7, subs. 1, F, p. 256.

(t) See Conveyancing Act, 1881,

s. 7, subs. 2, the covenants thereby implied being qualified by the proviso inserted in this precedent.

Proviso
qualifying
implied
covenants
for title of
tenant for
life.

Produc-
tion of
deeds.

of Settlement or now subject to the uses trusts and powers thereof shall henceforth go and be To THE USE of the said P. his heirs and assigns. Provided always and it is hereby declared that so far as regards the reversion or remainder expectant on the life estate of the said A. in the said hereditaments and premises expressed to be hereby appointed and the title to and further assurance of the same hereditaments and premises after his death the covenants on his part in these presents implied shall not extend to the acts deeds or defaults of any person or persons other than and besides himself and his own heirs and persons claiming under or in trust for him or them or any of them. AND the said A. hereby gives to the said P. an acknowledgment of the right of the said P. to production of the documents mentioned in the schedule hereunder written and to delivery of copies thereof and an undertaking for safe custody thereof (u). IN WITNESS &c. (x).

The schedule to the above-written Indenture.

(*List of Deeds.*)

XXI.

CONVEYANCE of FREEHOLDS *by* TENANT *for* LIFE *under* the SETTLED LAND ACT 1882, (y).

THIS INDENTURE made the ——— day of ———

(u) See Conveyancing Act, 1881, s. 9, p. 259.

(x) As to the mode of Execution of powers the Act 22 & 23 Vict. c. 35 enacts, s. 12. "A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall

have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity."

(y) The tenant for life in possession of settled land has power under ss. 3 and 20 of the Settled Land Act, 1882, to sell and convey the settled land discharged from all the limitations powers and provisions of the settlement, and from all estates interests and charges sub-

Between A. of &c. (*tenant for life*) of the 1st part B. of &c. and C. of &c. (*trustees of the settlement under which A. is tenant for life*) (z) of the 2nd part and P. of &c. (*purchaser*) of the 3rd part, WHEREAS J. S. late of &c. deceased duly made and executed his last will dated &c. and thereby devised all his real estate whatsoever and wheresoever To the use of his nephew the said A. and his assigns during his life without impeachment of waste, with divers remainders over, and he declared that it should be lawful for the said B. and C. and D. or the survivors or survivor of them or other the trustees or trustee for the time being of that his will with the consent of any person who under the limitations thereinbefore contained should be entitled in possession to the hereditaments thereby settled as tenant for life if such person should be of full age or otherwise at the discretion of the trustees or trustee to sell

Will of J. S., under which vendor is tenant for life, with power of sale in the trustees.

sisting or to arise thereunder, but subject to all estates interests and charges having priority to the settlement, and to all estates &c. created for securing money actually raised, and to all leases &c. already granted, see notes to ss. 3 and 20, pp. 331, 342. The precedent given above assumes that there are no prior estates interests or charges; but it will frequently be found that under a former settlement some person, probably the mother of the tenant for life, has a yearly rentcharge, and that his younger brothers and sisters are entitled to portions. Where this is the case a clear title cannot be given without the consent of such incumbrancers, and this may be difficult to be obtained, especially if any of the younger brothers and sisters have married and settled their portions. In Prec. XXIV. will be found a conveyance by the tenant for life with the concurrence of a mortgagee, and in Prec. XXV. a conveyance by the tenant for life

with the concurrence of a jointress and portioners and their trustees.

(z) It is not absolutely necessary that the trustees should be made parties, even though the purchase-money is paid to them and not into Court, but inasmuch as they probably have themselves a power of sale under the settlement it is desirable in any event to obtain their covenant against incumbrances, especially if they have been trustees during a minority. There is no such covenant under the Conveyancing Act of 1881 applicable to the case of trustees where not they but the tenant for life is conveying, and it would seem that in such a case as the present, where it should be distinctly ascertained that they have not exercised their powers under the settlement over the land in question, their covenant to that effect should be expressed in the appropriate words, and not merely implied by the use of other words.

Death of
testator
and pro-
bate of
his will.

Contract
for sale.

or exchange the said hereditaments or any part or parts thereof (a), And he appointed the said B. C. and D. executors of his said will, AND WHEREAS the said J. S. died on the _____ day of _____ without having revoked or altered his said will which was on the _____ day of _____ duly proved in the _____ Registry of the Probate Division of the High Court of Justice by the said B. and C. alone, the said D. having renounced probate thereof and by a deed poll dated &c. under his hand and seal the said D. disclaimed the trusts of the said will, AND WHEREAS the said A. as tenant for life in possession has agreed with the said P. for the sale to him in fee simple in possession free from incumbrances of the farm and hereditaments known as Blackacre Farm hereinafter conveyed being a portion of the real estate devised by the said will of the said J. S. as aforesaid for the sum of £_____, AND WHEREAS it has been agreed that the said sum of £_____ shall be paid to the said B. and C. as such trustees as aforesaid upon their joining in these presents in manner hereinafter appearing (b), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £_____ now paid by the said P. to the said B. and C.,

(a) It should be shown that the trustees have a power of sale, or are trustees within the meaning of the Settled Land Act, 1882; see notes to s. 2, subs. 8, and to s. 40 of that Act, pp. 330, 359.

(b) The money will probably be paid to the trustees as the simpler and cheaper course. Under s. 39 of the Settled Land Act, 1882, there must be two trustees at least to receive the purchase-money, and their receipt will be sufficient discharge under s. 40. The other alternative is to pay the money into Court, in which case this recital will run: "AND WHEREAS the said P. has on the _____ day of _____ paid the

said sum of £_____ into the Bank of England to the account of the Paymaster-General for the time being on behalf of the Chancery Division of the High Court of Justice to the credit of In the matter of an Indenture of Settlement dated &c. (or the will of J. S. dated &c.), under which A. is tenant for life in possession and of the Settled Land Act 1882." And the conveyance will be made "in consideration of the sum of £_____ so paid into Court as aforesaid." Such payment will effectually exonerate the purchaser; see Settled Land Act, 1882, s. 46, subs. 2, p. 362.

The receipt whereof the said B. and C. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby convey (c) unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO AND TO THE USE of the said P. his heirs and assigns. AND each of them the said B. and C. so far only as relates to his own acts and deeds doth hereby covenant with the said P. that they the said B. and C. have not respectively done or knowingly suffered or been party or privy to any act deed or thing whereby the said A. is prevented from exercising the powers of selling and conveying in manner aforesaid or whereby the hereditaments and premises hereby conveyed or any part thereof may be charged or incumbered or in any way affected (d). PROVIDED ALWAYS and it is hereby declared that so far as regards the reversion or remainder expectant on the life estate of the said A. in the said hereditaments and premises expressed to be hereby conveyed and the title to and further assurance of the same hereditaments and premises after his death the covenants on his part in these presents implied shall not extend to the acts deeds or defaults of any person or persons other than and besides himself and his own heirs and persons claiming under or in trust for him or them or any of them. AND the said A. hereby gives to the said P. an acknowledgment of the right of the said P. to production of the documents mentioned in the schedule hereunder written and to delivery of copies thereof and an undertaking for safe custody thereof (e). IN WITNESS &c.

Conveyance of freeholds.

Covenant by trustees against incumbrances.

Proviso limiting implied covenants for title by tenant for life.

Deeds.

The schedule to the above-written Indenture.

(List of Deeds.)

(c) See note to s. 49 of the Conveyancing Act, 1881, p. 295.

(e) See Conveyancing Act, 1881, s. 9, p. 259.

(d) See note (z), p. 33.

XXII.

CONVEYANCE of COPYHOLDS by TENANT for LIFE under
the SETTLED LAND ACT, 1882 (f).Title of
tenant for
life.Contract
for sale.

THIS INDENTURE made the ——— day of ———, between A. of &c. (*tenant for life*) of the 1st part, B. of &c. and C. of &c. (*trustees of the settlement under which A. is tenant for life*) of the 2nd part and P. of &c. (*purchaser*) of the 3rd part, WHEREAS &c. (*recite the Settlement or will under which the copyholds were covenanted to be surrendered or devised to the use of the trustee upon certain trusts under which the said A. is now tenant for life in possession of the hereditaments intended to be conveyed, and B. and C. trustees with power to sell or consent to a sale or to act as trustees for the purposes of the Settled Land Act, 1882, as the case may be, see note to s. 2, subs. 8, of the Settled Land Act, 1882, p. 330, and the admittance if any (g) of the trustees*), AND WHEREAS the said A. as tenant for life in possession has agreed with the said P. for the sale to him of the copyhold messuage and hereditaments hereinafter conveyed and the customary inheritance thereof in possession free from incumbrances being a portion of the hereditaments comprised in the hereinbefore recited Indenture of Settlement (*or will*) for the sum of £——, AND WHEREAS it has been agreed that the said sum of £—— shall be paid to the said B. and C. as such trustees as aforesaid upon their joining in these presents in manner hereinafter appearing (*h*), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given

(f) See notes (y), (z), and (a), to
Prec. XXI.

Settled Land Act, 1882, p. 342.

(h) See note (b), p. 34.

(g) See note (l) to s. 20 of the

to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby convey (i) unto the said P. and his heirs ALL &c. (*parcels*), To HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO AND TO THE USE of the said P. his heirs and assigns. (*Covenant by the trustees against incumbrances, see p. 35. Proviso limiting A.'s implied covenants for title, see p. 35, and acknowledgment of right to production of deeds and undertaking for their safe custody, see p. 35*). IN WITNESS &c.

XXIII.

CONVEYANCE of LEASEHOLDS by TENANT for LIFE under the SETTLED LAND ACT, 1882 (*k*).

THIS INDENTURE made the ——— day of ———, between A. of &c. (*tenant for life*) of the 1st part B. of &c. and C. of &c. (*trustees of the settlement under which A. is tenant for life*) of the 2nd part and P. of &c. (*purchaser*) of the 3rd part, WHEREAS by an Indenture of Lease dated &c. and made between (*lessor*) of the one part and L. (*lessee*) of the other part ALL &c. (*parcels from the lease*) with the appurtenances were demised by the said (*lessor*) unto the said L. his executors administrators and assigns for the term of ——— years from the ——— day of ——— at the yearly rent of £——— and subject to the covenants and conditions therein contained and on the part of the lessee to be observed and performed, AND WHEREAS by divers mesne assignments and acts in the law and ultimately by an Indenture dated &c. and made &c. the said leasehold premises were assigned to and

Recital of lease.

(i) This conveyance is made under s. 20 of the Settled Land Act, 1882, and "convey" is the appropriate word, not "covenant to surrender." The transaction will require to be completed by the admittance of the purchaser under subs. 3. The conveyance being a deed conferring the

right to admittance to copyhold land comes within subs. 5 of sect. 7 of the Conveyancing Act, 1881, and covenants for title will be implied by the words "as beneficial owner," see note to that section, p. 258.

(k) See notes (y), (z), and (a), to Prec. XXI., p. 32.

Contract
for sale.

Convey-
ance of
leaseholds.

became vested in the said B. and C. their executors administrators and assigns for the residue of the said term of ——— years, To hold the same upon the trusts declared by an Indenture of Settlement dated &c. and made &c. under which the said A. is now tenant for life in possession and the said B. and C. the trustees thereof, and by the same Indenture of Settlement it was declared that it should be lawful for the trustees or trustee thereof for the time being with the consent of the said A. to sell the hereditaments for the time being comprised therein or subject to the uses and trusts thereof or any part of the said hereditaments (1), AND WHEREAS the said A. as tenant for life in possession of the said leasehold hereditaments has agreed with the said P. for the sale thereof to him for the residue of the aforesaid term of ——— years free from incumbrances for the sum of £——, which it has been agreed shall be paid to the said B. and C. as such trustees as aforesaid upon their joining in these presents in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby convey unto the said P. his executors administrators and assigns ALL THAT piece of land and premises comprised in and demised by the aforesaid Indenture of Lease of the ——— day ———, TO HAVE AND TO HOLD the piece of land and premises hereby conveyed UNTO the said P. his executors administrators and assigns for all the residue of the said term of ——— years at the rent reserved by the said Indenture of Lease and under and subject to the covenants and conditions therein contained and on the part of the lessee to be observed and performed. (*Covenant by B. and C. against incumbrances, see p. 35. Proviso limiting A.'s implied*

(1) See note (a), p. 34.

covenants for title, see p. 35.) AND the said A. hereby gives to the said P. an acknowledgment of the right of the said P. to production of the said Indenture of Settlement of the ——— day of ——— and to delivery of copies thereof and an undertaking for safe custody thereof.

Production of settlement.

AND the said P. doth hereby covenant with the said A. and also as a separate covenant with the said B. and C. that he the said P. his heirs executors administrators and assigns will during the residue of the said term pay the rent reserved by the said Indenture of Lease and observe and perform the covenants and conditions therein contained and on the part of the lessee to be observed and performed, and will at all times hereafter keep indemnified the said A. and also the said B. and C. and each of them their and each of their heirs executors and administrators and their and each of their estates and effects against the payment of the said rent and the observance and performance of the said covenants and conditions and also against all actions claims and demands for or on account of such rent covenants or conditions or in anywise relating thereto. IN WITNESS &c.

Covenant by purchaser to pay rent &c.

XXIV.

CONVEYANCE of FREEHOLDS by TENANT for LIFE under the SETTLED LAND ACT, 1882, with the concurrence of a MORTGAGEE of the fee who receives the purchase money (m).

THIS INDENTURE made the ——— day of ——— Between A. of &c. (tenant for life) of the 1st part B. of &c. and C. of &c. (trustees of the settlement under which A. is tenant for life) of the 2nd part M. of &c. (mortgagee) of the 3rd part and P. of &c. (purchaser) of the 4th part, WHEREAS by an Indenture dated &c. and made between J. S. of the

Recital of mortgage.

(m) See notes (y), (z), and (a), to Prec. XXI., p. 32.

Title of
tenant for
life.

Amount
owing on
mortgage.

Contract
for sale.

Payment
of pur-
chase
money
to mort-
gagee.

one part and the said M. of the other part the farm and hereditaments known as Blackacre Farm hereinafter conveyed were together with other hereditaments granted by the said J. S. unto and to the use of the said M. his heirs and assigns subject to a proviso therein contained for the redemption of the same hereditaments on payment by the said J. S. his heirs executors administrators or assigns to the said M. his executors administrators or assigns of the sum of £5000 on the ——— day of ——— with interest at the rate of £5 per cent. per annum on the days and in manner therein mentioned, AND WHEREAS the said J. S. duly made and executed his last will dated &c. (*recite the will of J. S. under which A. is tenant for life in possession and B. and C. trustees with power of sale with A.'s consent (n), see p. 33*); AND WHEREAS &c. (*recite death of J. S. and probate of his will, see p. 34*), AND WHEREAS the said principal sum of £5000 together with interest thereon from the ——— day of ——— is now owing to the said M. on the security of the aforesaid Indenture of Mortgage, AND WHEREAS the said A. as tenant for life in possession has agreed with the said P. for the sale to him in fee simple in possession free from incumbrances of the said farm and hereditaments known as Blackacre Farm being a portion of the real estate devised by the said will of the said J. S. as aforesaid for the sum of £2000, AND WHEREAS it has been agreed that the said sum of £2000 shall be paid to the said B. and C. as such trustees as aforesaid upon their joining in these presents in manner hereinafter appearing, and that the said B. and C. shall thereupon pay the said sum of £2000 to the said M. in part discharge of his said security (o) upon his

(n) See p. 34, n. (a).

(o) The money must in the first instance be paid either to the trustees or into Court, s. 22 of the Settled Land Act, 1882. It can then under s. 21 or under the provisions of the settlement relating to the investment of trust funds be paid to the

mortgagee in part discharge of his incumbrance. It should be seen that a receipt for the money paid to the mortgagee is indorsed on his mortgage deed and signed by him, as evidence that his security over the whole property is discharged to that extent. See p. 347.

joining in these presents in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £2000 now paid by the said P. to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, and by the said B. and C. paid over to the said M., The receipt whereof the said M. doth hereby acknowledge, He the said M. as mortgagee at the request and by the direction of the said A. as beneficial owner doth hereby grant and release, and He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby convey unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted and conveyed UNTO AND TO THE USE of the said P. his heirs and assigns, FREED AND DISCHARGED from the said principal sum of £5000 and all interest for the same and all moneys secured by and all claims and demands under the hereinbefore recited Indenture of Mortgage. (*Covenant by B. and C. against incumbrances, see p. 35. Proviso limiting A.'s implied covenants for title, see p. 35*). AND the said M. doth hereby give to the said P. an acknowledgment of the right of the said P. to production of the documents mentioned in the schedule hereto and to delivery of copies thereof. AND the said A. so far as relates to the acts of himself and his own heirs executors and administrators whenever the said documents mentioned in the schedule hereto shall be or ought to be in his or their custody or power and for the purpose of binding all persons into whose hands the said documents shall come so far as it is competent so to bind them without creating any personal liability on the part of the said A. his heirs executors or administrators doth hereby covenant with the said P. that he the said A. and all other persons in whose hands the said documents shall be will at all times hereafter keep the said documents safe whole uncanceled and undefaced all losses and damages

Grant of freeholds by mortgagee. Conveyance by tenant for life.

Deeds.

by fire or other inevitable accident only excepted (p). IN
WITNESS &c.

The schedule to the above-written Indenture.

(*List of Deeds.*)

XXV.

CONVEYANCE of FREEHOLDS by TENANT for LIFE under
the SETTLED LAND ACT, 1882, with consent of his
mother a widow entitled to a rentcharge during her
life and of persons entitled to portions (q).

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*tenant for life*) of the 1st part W. of
&c. widow (*mother of A. and jointress*) of the 2nd

(p) See Conveyancing Act, 1881,
s. 9, and note thereto, p. 259.

(q) See note (y) to Prec. XXI.,
p. 32. Precedent XXV. assumes
that the incumbrancers under the
prior settlement, whose incum-
brances the tenant for life has no
power to affect under s. 20, subs. 2,
of the Settled Land Act, 1882, are
willing and competent to release the
land sold. From the rentcharge
given to his own wife and the por-
tions charged for his younger chil-
dren, the tenant for life can sell the
land discharged, unless the money
has been actually raised, subs. 2, ii.
They therefore need not join in this
conveyance. If any incumbrancer,
whose incumbrance without his con-
sent the tenant for life cannot affect,
is unwilling or incompetent to re-
lease the land sold as suggested in
the note to s. 20, subs. 2, p. 344, the
tenant for life might give the fol-
lowing declaration and covenant:
"PROVIDED ALWAYS and the said
A. so far as he lawfully can doth
hereby charge the aforesaid incum-

brance of the said (*incumbrancer*) for
£—— upon all the other heredita-
ments remaining subject to the
uses and trusts of the hereinbefore
recited Indenture of Settlement of
the ——— day of ——— in exoneration
of the hereditaments hereby con-
veyed, And further the said A. doth
hereby covenant with the said P.
that he the said A. will during his
life out of the rents and profits of
the hereditaments and other prop-
erty of which for the time being
he may be tenant for life under the
same Indenture of Settlement pay
all interest for the time being owing
in respect of the aforesaid incum-
brance of £—— and will so far as
such rents and profits extend indem-
nify the said P. his heirs executors
administrators and assigns against
payment of all such interest and
against all actions claims and de-
mands in respect thereof." A will-
ing purchaser might prefer to accept
the title with such a provision rather
than to forego the purchase, see Prec.
III. cl. 6, p. 9, and note (e), p. 344.

part Q. of &c. and R. of &c. (*trustees of 200 years for securing rentcharge to W.*) (r) of the 3rd part K. of &c. (*spinster*) and L. of &c. (*the younger sister and brother of A. entitled to portions*) of the 4th part Y. of &c. and Z. of &c. (*trustees of 1000 years for securing the portions*) of the 5th part B. of &c. and C. of &c. (*trustees of the settlement under which A. is tenant for life*) of the 6th part and P. of &c. (*purchaser*) of the 7th part, WHEREAS by an Indenture of Settlement dated &c. and made between H. since deceased the father of the said A. of the 1st part the said W. then ——— spinster of the 2nd part E. F. and G. (*trustees*) of the 3rd part the said Q. and R. of the 4th part and the said Y. and Z. of the 5th part being the settlement executed previous to the marriage shortly afterwards solemnized between the said H. and W. certain hereditaments therein described were limited and assured after the solemnization of the then intended marriage between the said H. and W. to the use of the said H. during his life and after the decease of the said H. to the use that the said W. should during her life receive the yearly rentcharge of £—— for her jointure as therein mentioned and subject as aforesaid to the use of the said Q. and R. their executors administrators and assigns for the term of 200 years to commence from the death of the said H. upon the trusts thereafter declared for securing the said rentcharge to the said W., And subject as aforesaid to the use of the said Y. and Z. their executors administrators and assigns for the term of 1000 years to commence from the death of the said H. upon the trusts thereafter declared for securing the sum of £10,000 to be raised as portions for the younger children of the said H. such portions to be vested in and payable unto such younger children at such ages and in such

Settlement made on marriage of father and mother of tenant for life under which the jointress and portioners claim.

(r) It is better if such trustees are in existence to make them join, as the term, although perhaps a satisfied term so far as regards the land discharged, is not an entirely satisfied term so long as the rentcharge re-

mains payable. In settlements made after the Conveyancing Act, 1881, it is probable that there will be no trustees of the rentcharge, see *Preo. XCI.*, p. 199, and s. 44 of the same Act, p. 290.

Disentail-
ing deed.

Settle-
ment made
on mar-
riage of
present
tenant for
life.

manner as the said H. should by deed or will appoint, And subject to such appointment to be for the portions of such younger children in equal shares as therein mentioned, And subject as aforesaid to the use of the first and other sons of the said H. successively according to their respective seniorities in tail male with divers remainders over, AND WHEREAS the said A. is the eldest son of the said H. and attained the age of twenty-one years on the ——— day of ———, AND WHEREAS by an Indenture dated &c. inrolled and perfected as a disentailing assurance and expressed to be made between the said H. of the 1st part the said A. of the 2nd part and X. of the 3rd part the hereditaments subject to the uses trusts and powers of the hereinbefore recited Indenture of Settlement of the ——— day of ——— were subject and without prejudice to the uses estates and powers which under the same Indenture were prior to the estate in tail male of the said A. (other than the estate for life of the said H.) and to the uses and estates limited in exercise of such powers limited to such uses upon such trusts and with and subject to such powers provisions and declarations as the said H. and A. should by any deed or deeds with or without power of revocation and new appointment jointly direct limit and appoint and subject to any such appointment to the uses therein mentioned, AND WHEREAS by an Indenture of Settlement dated &c. and made between the said H. of the 1st part the said A. of the 2nd part J. the wife of the said A. then ——— spinster of the 3rd part and the said B. and C. and D. (*the trustees*) of the 4th part being the settlement executed previous to the marriage shortly afterwards solemnized between the said A. and J. the hereditaments included in the aforesaid disentailing assurance were limited and assured after the solemnization of the then intended marriage between the said H. and J. to the use that the said A. might receive a rentcharge during the life of the said H. as therein mentioned, And to the further use that after the death of the said A. the said J. might receive a rentcharge as therein mentioned for her jointure,

And subject and charged as aforesaid to the use of the said H. and his assigns during his life without impeachment of waste in restoration of his life estate under the hereinbefore recited Indenture of Settlement of the ——— day of ——— (*the settlement made on H.'s marriage*), and after the decease of the said H. to the use of the said A. and his assigns during his life without impeachment of waste, with divers remainders over, and by the same Indenture of Settlement it was declared that it should be lawful for the said B. C. and D. or the survivors or survivor of them or other the trustees or trustee for the time being of the same Indenture with the consent of any person who under the limitations thereinbefore contained should be entitled in possession to the hereditaments thereby settled as tenant for life if such person should be of full age or otherwise at the discretion of the trustees or trustee to sell or exchange the said hereditaments or any part or parts thereof (s), AND WHEREAS the said D. died on the ——— day of ——— leaving the said B. and C. his co-trustees him surviving, AND WHEREAS the said H. died on the ——— day of ——— having by his last will dated &c. and proved on the ——— day of ——— in the ——— Registry of the Probate Division of the High Court of Justice exercised the power of appointment reserved to him by the aforesaid Indenture of Settlement of the ——— day of ——— (*the settlement made upon H.'s marriage*) by appointing £4000 part of the aforesaid sum of £10,000 to be raised for portions as aforesaid to his daughter the said K. and the sum of £6000 the residue thereof to his son the said L., AND WHEREAS the said A. as tenant for life in possession has agreed with the said P. for the sale to him in fee simple in possession free from incumbrances of the farm and hereditaments known as Blackacre Farm hereinafter

Death of a trustee.

Death of father of tenant for life.

Appointment of portions.

Contract for sale.

(s) Or "And by the same Indenture of Settlement it was declared that the said B. C. and D. or other the trustees or trustee for the time being of the same Indenture should

be the trustees thereof for the purposes of the Settled Land Act, 1882, and for all other purposes" as the case may be, see note (a), p. 34, and note (a), p. 330.

conveyed being a portion of the hereditaments comprised in or now subject to the uses of the hereinbefore recited Indenture of Settlement of the ——— day of ——— (*the settlement made on A.'s marriage*) for the sum of £——,

Consent of
incum-
brancers
to release
the land
sold.

AND WHEREAS the said W. and her trustees the said Q. and R. and the said K. and L. and their trustees the said Y. and Z. being satisfied with the security of the other hereditaments comprised in the hereinbefore recited Indenture of Settlement of the ——— day of ——— (*the settlement made on H.'s marriage under which they are entitled*) have consented to join in these presents for the purpose of releasing the said hereditaments intended to be hereby conveyed from the said yearly rentcharge of £—— and the said portions of £4000 and £6000 re-

Payment
of pur-
chase
money.

spectively in manner hereinafter appearing, AND WHEREAS it has been agreed that the said sum of £—— (*the purchase money*) shall be paid to the said B. and C. as such trustees as aforesaid upon their joining in these presents in manner hereinafter appearing (t), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £——

Convey-
ance of
freeholds.

now paid by the said P. to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby convey, And she the said W. doth hereby release, and they the said Q. and R. as trustees with the consent and by the direction of the said W. and to the intent that the residue of the said term of 200 years so far as it affects the hereditaments intended to be hereby conveyed may merge and be extinguished in the reversion and inheritance of the same hereditaments do and each of them doth hereby assign and surrender, And they the said K. and L. do and each of them doth hereby release, and they the said Y. and Z. as trustees with the consent and by the direction of the said K. and L. and to the intent that the

(t) See note (b), p. 34.

residue of the said term of 1000 years so far as it affects the hereditaments intended to be hereby conveyed may merge and be extinguished in the reversion and inheritance of the same hereditaments do and each of them doth hereby assign and surrender unto the said P. and his heirs ALL &c. (*parcels*), To HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO AND TO THE USE of the said P. his heirs and assigns, FREED AND DISCHARGED from the said yearly rentcharge of £—— and from the said portions of £4000 and £6000 respectively and all interest for the same sums and all claims and demands in respect of the said rentcharge and portions respectively. (*Covenant by B. and C. against incumbrances. Proviso limiting A.'s covenants. Acknowledgment, and undertaking by A. as to title deeds, see p. 35*). IN WITNESS &c.

Dis-
charged
from
incum-
brances.

XXVI.

CONVEYANCE of FREEHOLDS by TRUSTEES of the SETTLEMENT on behalf of an INFANT TENANT in tail under the SETTLED LAND ACT, 1882 (*u*).

THIS INDENTURE made the —— day of ——

(*u*) Under s. 60 of the Settled Land Act, 1882, the trustees of the settlement may exercise the powers of an infant tenant for life, or infant having the powers of a tenant for life, on his behalf, see p. 371. In the precedent given above and in most settlements made before the Settled Land Act where there is an infant tenant for life or in tail, a power is expressly given to the trustees of selling and of revoking the uses of the settlement and appointing the lands sold to the purchaser, see Prec XX. But in view of s. 56 of the Settled Land Act, 1882, which provides that notwithstanding

anything in the settlement the consent of the tenant for life shall be necessary to the exercise by the trustees of the settlement of any power conferred by the settlement, it seems doubtful whether the trustees could exercise such a power where the person to consent is an infant. It is nevertheless necessary to show that they have such a power given to them by the settlement or that they are otherwise trustees of the settlement within the meaning of the Settled Land Act, 1882, see s. 2, subs. 8, and s. 40 and notes thereon, pp. 330, 359.

Settle-
ment
under
which the
infant is
entitled.

Between B. of &c. and C. of &c. (*the trustees of the settle-
ment*) of the one part and P. of &c. (*purchaser*) of the
other part, WHEREAS by an Indenture of Settlement dated
&c. and made between H. of &c. of the 1st part W. of &c.
of the 2nd part and E. and F. of the 3rd part being the
settlement executed previous to the marriage shortly
afterwards solemnized between the said H. and W. certain
hereditaments therein described were limited after the
solemnization of the said then intended marriage to the
use of the said H. during his life and after the decease of
the said H. to the use that the said W. should during her
life receive a yearly rentcharge for her jointure as therein
mentioned, and subject and charged as aforesaid to the
use of the said E. and F. their executors administrators
and assigns for the term of 1000 years to commence from
the death of the said H. upon the trusts thereafter de-
clared for the purpose of raising portions for the younger
children of the said intended marriage as therein men-
tioned (*x*), and subject as aforesaid to the use of the first
and other sons of the said H. successively according to
their respective seniorities in tail male, with divers re-
mainders over, and by the same settlement it was declared
that it should be lawful for the said E. and F. and the
survivor of them or other the trustees or trustee for the
time being of the said settlement with the consent of the
said A. if living and after his death at the discretion of the
trustees or trustee to sell or exchange the said heredita-
ments or any part or parts thereof (*y*), AND WHEREAS the
said W. died on the ——— day of ——— and the said H.
died on the ——— day of ——— and thereupon A. his
eldest son became tenant in tail male in possession of the
said hereditaments under the limitations contained in the
said Indenture of Settlement, AND WHEREAS the said E.
died on the ——— day of ——— leaving the said F. his

Power for
trustees to
sell.

Death of
parents of
infant.

Changes
in the
trustees.

(*x*) The rentcharge and portions
being charges subsisting or to arise
under the settlement, the land can
be conveyed discharged therefrom,

see Settled Land Act, 1882, s. 20,
subs. 2. See also notes to s. 22,
subs. 5, s. 24, subs. 1, p. 342.

(*y*) See note (*a*), p. 34.

co-trustee him surviving, AND WHEREAS by an Indenture dated &c. and made between the said F. of the one part and the said B. and C. of the other part the said F. appointed the said B. and C. to be trustees of the said Indenture of Settlement in the respective places of the said E. deceased and the said F. who was desirous of retiring from the trusts of the same Indenture of Settlement, AND WHEREAS the said A. is an infant of the age of ——— years or thereabouts, AND WHEREAS the said B. and C. acting on behalf of the said A. as such infant tenant in tail male as aforesaid have agreed with the said P. for the sale to him in fee simple in possession free from incumbrances of the farm and hereditaments known as Blackacre Farm hereinafter conveyed being a portion of the hereditaments comprised in or now subject to the uses of the aforesaid Indenture of Settlement for the sum of £——, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said B. and C. (z), The receipt whereof the said B. and C. do hereby acknowledge, They the said B. and C. as trustees in exercise of the power for this purpose given to them on behalf of the said A. by the Settled Land Act, 1882, and of every other power enabling them in this behalf do and each of them doth hereby convey (a) unto the said P. and his heirs ALL &c. (parcels), TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO AND TO THE USE of the said P. his heirs and assigns. AND the said B. and C. do

Contract
for sale.

(z) If the money is to be paid into Court, such payment in should be recited and the conveyance altered accordingly, see p. 34, n. (b). The receipt of the trustees is sufficient, s. 40 of the Settled Land Act, 1882.

(a) The trustees are exercising a statutory power of conveying. They cannot disentail the property sold which would alter the disposition of the purchase money, but their con-

veyance is effectual to pass the land conveyed discharged from all the limitations of the settlement and the charges subsisting thereunder except those mentioned in s. 20, subs. 2, of the Settled Land Act, 1882. If there are such charges outstanding as are excepted in that subsection these must be released or provided against, see Prec. XXIII. and XXIV., and note (p), p. 342.

Conveyance by Married Woman Tenant for Life.

and each of them doth hereby give to the said P. an acknowledgment of the right of the said P. to production of the documents mentioned in the schedule hereto and to delivery of copies thereof (b). IN WITNESS &c.

XXVII.

CONVEYANCE of FREEHOLDS by MARRIED WOMAN TENANT
for LIFE under the SETTLED LAND ACT, 1882 (c).

Settle-
ment
under
which
the
married
woman is
tenant for
life.

THIS INDENTURE made the ——— day of ———
Between A. (*tenant for life*) the wife of H. of &c. of the
1st part B. of &c. and C. of &c. (*trustees of the settlement
under which A. is tenant for life*) of the 2nd part and
P. of &c. (*purchaser*) of the 3rd part, WHEREAS &c. (*recite
the settlement under which A. is tenant for life for her
separate use without power of anticipation and B. and C.
trustees with power of sale, see Prec. XXI., p. 33*), AND
WHEREAS &c. (*recite agreement for sale to P. and that the
purchase money shall be paid to B. and C., see p. 34*),
NOW THIS INDENTURE WITNESSETH that in
pursuance of the said agreement and in consideration of
the sum of £——— now paid by the said P. to the said B.
and C., The receipt whereof the said B. and C. do hereby
acknowledge, She the said A. as beneficial owner in
exercise of the power for this purpose given to her by the
Settled Land Act, 1882, and of every other power enabling
her in this behalf doth hereby convey unto the said P. and
his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the
hereditaments and premises hereby conveyed UNTO AND
TO THE USE of the said P. his heirs and assigns. (*Covenant
by B. and C. against incumbrances, see p. 35. Proviso
limiting A's implied covenants for title, see p. 35.*

(b) See Conveyancing Act, 1881,
s. 9, p. 259.

(c) See s. 61. If the married
woman is not entitled for her sepa-
rate use, her husband must be made

a party, in the same way as in Prec.
XIII. The restraint on anticipa-
tion will not prevent her exercise of
the powers given by the Act, see
subs. 6, p. 372.

Acknowledgment and undertaking by A. as to deeds, or acknowledgment only by B. and C., as the case may require, see p. 35). IN WITNESS &c.

XXVIII.

CONVEYANCE of FREEHOLDS by TENANT for LIFE or in TAIL who is a LUNATIC under the SETTLED LAND ACT, 1882 (d).

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*tenant for life or in tail*) a lunatic by G. of &c. the committee of the estate of the said lunatic of the 1st part B. of &c. and C. of &c. (*trustees of the settlement under which A. is tenant for life or in tail*) of the 2nd part and P. of &c. (*purchaser*) of the 3rd part, WHEREAS &c. (*recite the Indenture of Settlement or Will under which A. is tenant for life or in tail and B. and C. trustees with power of sale as in Prec. XXI., p. 33*), AND WHEREAS the said A. is a person of unsound mind so found by inquisition and the said G. is the committee of his estate having been appointed such committee by an order dated &c. and made by the Lords Justices of the Court of Appeal In the matter of A. a person of unsound mind, AND WHEREAS by an order in Lunacy dated &c. and made by the said Lords Justices in the matter aforesaid on the petition of the said G., It was ordered that the report of ——— Esq. one of the Masters in Lunacy dated &c. should be confirmed (*the report approving the proposed sale*), And it was ordered that the said G. as the committee

Settlement under which lunatic is entitled. Recital of lunacy.

Order of lords justices approving sale.

(d) See Lunacy Regulation Act, 16 & 17 Vict. c. 70, s. 136. This conveyance is framed under s. 62 of the Settled Land Act, 1882. There is great convenience in selling the property of a lunatic under this Act because the purchase money is deemed to be land and remains subject to the same uses and trusts under the settlement as the land sold

was subject to, without altering the devolution. The Court has felt an objection to permitting land of a lunatic to be disentailed or converted into personalty, or *vice versa*, so as to affect the rights of succession on the death of the lunatic, see *Weld v. Tew*, Beatty's Rep. 267, *In re Pares*, L. R. 12 Ch. D. 333.

Conveyance by Lunatic Tenant for Life.

Masters' approval of deed.

Conveyance of freeholds.

of the estate of the said A. should be at liberty to take such steps and proceedings as might be necessary and proper for the purpose of carrying into effect the sale of the land and hereditaments in the fourth paragraph of the said report mentioned of which the said A. is tenant for life (or in tail) in possession under the limitations of the hereinbefore recited Indenture of Settlement to the said P. in fee simple in possession free from incumbrances for the price of £——, and that the said sum of £—— should be paid to the said B. and C. as such trustees as aforesaid and that for the purpose aforesaid the said G. as such committee as aforesaid should be at liberty in the name and on the behalf of the said A. on the due payment of the said sum of £—— as aforesaid to execute such deeds and instruments as might be necessary and proper such deeds and instruments to be first settled and approved by the Masters in Lunacy, AND WHEREAS these presents have been approved as a proper conveyance pursuant to the aforesaid order of the —— day of —— by the said (master) as appears by his signature hereto, NOW THIS INDENTURE WITNESSETH that for the purpose of carrying the said sale into effect and in consideration of the sum of £—— now paid by the said P. to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth by this deed sealed and delivered in his name and on his behalf by the said G. the committee of his estate convey unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO AND TO THE USE of the said P. his heirs and assigns. (*Covenant by B. and C. against incumbrances, see p. 35. Proviso limiting A.'s implied covenants for title, see p. 35. Acknowledgment by G. of the right of P. to production of title deeds and to delivery of copies thereof, see p. 35.*) IN WITNESS &c. (e).

(e) The committee should not execute the deed in his own name or

XXIX.

CONVEYANCE of FREEHOLDS and COVENANT to SURRENDER
COPYHOLDS to the USES of a SETTLEMENT under which
the PURCHASER is TENANT for LIFE, the money being
paid by the trustees of his settlement (f).

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*vendör*) of the 1st part P. of &c.
(*tenant for life under the settlement to the uses of which
the property purchased is to be conveyed*) of the 2nd part
and B. of &c. C. of &c. and D. of &c. (*trustees of the settle-
ment*) of the 3rd part, WHEREAS &c. (*recite A.'s title to the
freehold and copyhold hereditaments, see p. 18*), AND ^{Contract} WHEREAS the said A. has agreed with the said P. (g) ^{for sale.} as
tenant for life in possession under an Indenture of Settle-
ment dated &c. and made &c. whereof the present trustees
are the said B. C. and D. for the sale of the said freehold
hereditaments and the inheritance thereof in fee simple in
possession free from incumbrances, and of the said copy-
hold hereditaments and the customary inheritance thereof
in possession free from incumbrances for the sum of
£——, AND WHEREAS it has been agreed that the
said sum of £—— shall be paid to the said A. by the
said B. C. and D. out of capital moneys belonging to
them as trustees of the said Indenture of Settlement,
and that thereupon the said freehold and copyhold here-
ditaments shall be assured to the uses upon the trusts
and with and subject to the powers and provisions herein-
after appearing, AND WHEREAS &c. (*apportionment of
purchase money, see p. 18*), NOW THIS INDENTURE
WITNESSETH that in pursuance of the said agreement
and in consideration of the sum of £—— (*total amount*)
now paid by the said B. C. and D. out of such capital
moneys as aforesaid to the said A., The receipt whereof

with his own seal, but in the name
and with the seal of the lunatic, see
Lawrie v. Lees, L. R. 7 Ap. Ca. 24.

(f) See Settled Land Act, 1882,
s. 24, p. 349.
(g) See same Act, s. 31, p. 355.

Grant of
freeholds,

To the
uses of the
settle-
ment.

Covenant
to surren-
der copy-
holds.

Copyholds
to be held
upon cor-
responding
trusts.

the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby grant unto the said B. C. and D. and their heirs ALL &c. (*parcels of freeholds*) (h), To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO the said B. C. and D. their heirs and assigns TO THE USES upon the trusts and with and subject to the powers and provisions declared by and contained in the said Indenture of Settlement of the ——— day of ——— of and concerning the freehold hereditaments thereby settled or so far as the same uses trusts powers and provisions are now subsisting and capable of taking effect but not so as to increase or multiply charges or powers of charging. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid He the said A. doth hereby covenant with the said P. and also as a separate covenant with the said B. C. and D. that he the said A. or his heirs and all other necessary parties if any will at the cost of the said B. C. and D. or other the trustees or trustee for the time being of the said Indenture of Settlement forthwith surrender or cause to be surrendered into the hands of the lord of the manor of ——— according to the custom of the said manor ALL &c. (*parcels of copyholds*) TO THE USE of the said B. C. and D. or other such trustees or trustee as aforesaid their or his heirs and assigns, To be holden at the will of the lord according to the custom of the said manor by and under the rents fines suits and services therefor due and of right accustomed, Nevertheless upon the trusts and with and subject to the powers and provisions declared by and contained in the said Indenture of Settlement of the ——— day of ——— of and concerning the copyhold hereditaments thereby settled or so far as the same trusts powers and provisions are now subsisting and capable of taking effect but not so as to increase or multiply charges or powers of charging, (*or, if no copyholds were contained in the settlement, Nevertheless*

(h) See note (b), p. 18.

upon such trusts and with and subject to such powers and provisions as shall as nearly as may be correspond with the uses trusts powers and provisions which are now subsisting under the said Indenture of Settlement concerning the freehold hereditaments thereby settled but not so as to increase or multiply charges or powers of charging). (*Covenants by P. for title as to copyholds, see Prec. VIII., p. 14, and note to Conveyancing Act, 1881, s. 7, subs. 5, p. 258*). IN WITNESS &c.

XXX.

CONVEYANCE of FREEHOLDS and COPYHOLDS by TENANT for LIFE under the SETTLED LAND ACT, 1882, to the USES of a SETTLEMENT under which the PURCHASER is TENANT for LIFE, the money being paid by the trustees of his settlement (i).

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*vendor and tenant for life*) of the 1st part B. of &c. and C. of &c. (*trustees of the settlement under which A. is tenant for life*) of the 2nd part P. of &c. (*purchaser and tenant for life*) of the 3rd part and D. of &c. E. of &c. and F. of &c. (*trustees of the settlement under which P. is tenant for life*) of the 4th part, WHEREAS &c. (*recite the settlement under which A. is tenant for life in possession of the hereditaments intended to be conveyed, and B. and C. trustees with power of sale or trustees for the purposes of the Settled Land Act, 1882, as the case may be, see Prec. XXI. and XXII., pp. 33 and 36*), AND WHEREAS the said A. as tenant for life in possession under the hereinbefore recited Indenture of Settlement of the ——— day of ——— has agreed with the said P. as tenant for life in possession under an Indenture of Settlement dated &c. and made &c., whereof the present trustees are the said D. E. and F., for the sale of the freehold hereditaments hereinafter

Settle-
ment
under
which
vendor is
tenant for
life.

Contract
for sale.

(i) See Settled Land Act, 1882, ss. 20, 24, pp. 342, 349.

conveyed and the inheritance thereof in fee simple in possession free from incumbrances, and of the copyhold hereditaments hereinafter conveyed and the customary inheritance thereof in possession free from incumbrances for the sum of £——, AND WHEREAS it has been agreed that the said sum of £—— shall be paid by the said D. E. and F. out of capital moneys belonging to them as trustees of the said Indenture of Settlement of the —— day of —— to the said B. and C. as trustees of the said Indenture of Settlement of the —— day of ——, and that thereupon the said freehold and copyhold hereditaments shall be conveyed to the uses upon the trusts and with and subject to the powers and provisions hereinafter respectively appearing, AND WHEREAS &c. (*recite apportionment of purchase money, see p. 18*), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— (*total amount*) now paid by the said D. E. and F. out of such capital moneys as aforesaid to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act 1882, and of every other power enabling him in this behalf doth hereby convey unto the said D. E. and F. and their heirs ALL &c. (*parcels of freeholds*), AND ALSO ALL &c. (*parcels of copyholds*), To HAVE AND TO HOLD the freehold hereditaments and premises hereby conveyed UNTO the said D. E. and F. their heirs and assigns TO THE USES upon the trusts and with and subject to the powers and provisions declared by and contained in the said Indenture of Settlement of the —— day of —— of and concerning the freehold hereditaments thereby settled or so far as the same uses trusts powers and provisions are now subsisting and capable of taking effect but not so as to increase or multiply charges or powers of charging, AND TO HAVE AND TO HOLD the copyhold hereditaments and premises hereby conveyed UNTO

Convey-
ance of
freeholds
and copy-
holds.

Uses of
freeholds.

AND TO THE USE of the said D. E. and F. their heirs and assigns at the will of the lord according to the custom of the said manor by and under the rents fines suits and services therefor due and of right accustomed, Nevertheless ^{Trusts of copyholds.} upon the trusts and with and subject to the powers and provisions declared by and contained in the said Indenture of Settlement of the ——— day of ——— of and concerning the copyhold hereditaments thereby settled or so far as the same trusts powers and provisions are now subsisting and capable of taking effect but not so as to increase or multiply charges or powers of charging, (*or, if no copyholds were comprised in the settlement, Nevertheless upon such trusts &c., as in Prec. XXIX., p. 54).* (*Covenant by B. and C. against incumbrances, see p. 35. Proviso limiting A.'s covenants for title, see p. 35. Acknowledgment and undertaking by A. as to title deeds, see p. 35).* IN WITNESS &c.

XXXI.

EXCHANGE of FREEHOLDS *by two TENANTS for LIFE by MUTUAL DEEDS. CONVEYANCE of FREEHOLDS by TENANT for LIFE under the SETTLED LAND ACT, 1882, and payment by the trustees of his settlement of a sum of money for equality of exchange. RESERVATION of the MINERALS under the land conveyed (k).*

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*tenant for life under the one settlement*) of the 1st part B. of &c. and C. of &c. (*trustees of the settlement under which A. is tenant for life*) of the 2nd part H. of &c. (*tenant for life under the other settlement*) of the 3rd part and E. of &c. and F. of &c. (*trustees of the settlement under which H. is tenant for life*) of the 4th

(k) See Settled Land Act, 1882, 333, and notes (y), (z), (a), (b) to s. 3, subs. 3, s. 4, subs. 6, pp. 332, Prec. XXI, pp. 32—34.

Exchange by two Tenants for Life.

Recitals of the settlements. part, WHEREAS &c. (*recite the settlement under which A. is tenant for life in possession and B. and C. trustees with power of sale with A.'s consent, see p. 33*), AND WHEREAS &c. (*recite the settlement under which H. is tenant for life in possession and E. and F. trustees with power of sale with H.'s consent*), AND WHEREAS the said A. as tenant for life in possession under the said Indenture of Settlement of the ——— day of ——— has agreed with the said H. as tenant for life in possession under the said Indenture of Settlement of the ——— day of ——— for the exchange of the land and hereditaments known as Blackacre Farm hereinafter conveyed and the inheritance thereof in fee simple in possession free from incumbrances but excepting the mines and minerals thereunder being portion of the hereditaments of which the said A. is tenant for life as aforesaid for certain other land and hereditaments known as Whiteacre Farm being portion of the hereditaments of which the said H. is tenant for life as aforesaid, AND WHEREAS as part of the said agreement it was agreed that the sum of £—— should be paid by the said E. and F. out of capital moneys belonging to them as trustees of the said Indenture of Settlement of the ——— day of ——— to the said B. and C. as trustees of the said Indenture of Settlement of the ——— day of ——— for equality of exchange (l), AND

Agreement for exchange.

Payment for equality of exchange.

Indenture of even date.

WHEREAS in part pursuance of the said agreement by an Indenture bearing even date and intended to be executed at the same time with these presents and expressed to be made between the said H. of the 1st part the said E. and F. of the 2nd part the said A. of the 3rd part and the said B. and C. of the 4th part the land and hereditaments known as Whiteacre Farm are intended to be conveyed by the said H. as tenant for life in possession thereof unto the said B. and C. and their heirs To hold the same unto the said B. and C. their heirs and assigns To the uses upon the trusts and with and subject to the powers and provisions contained in and declared by the hereinbefore

(l) See Settled Land Act, 1881, s. 21, (iv), p. 346.

recited Indenture of Settlement of the ——— day of ——— of and concerning the freehold hereditaments thereby settled or so far as the same uses trusts powers and provisions are now subsisting and capable of taking effect, NOW THIS INDENTURE WITNESSETH that for the purpose of carrying the said exchange into effect and in consideration of the premises and also of the sum of £ ——— now paid by the said E. and F. out of capital moneys belonging to them as such trustees as aforesaid to the said B. and C., The receipt whereof the said B. and C. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby convey unto the said E. and F. and their heirs ALL &c. (*parcels*), EXCEPT AND RESERVED out of the hereditaments hereby conveyed all mines coal ironstone and other minerals whatsoever whether opened or unopened in or under the same hereditaments with such liberties and rights of working the same and subject to such provisions as are hereinafter contained, TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO the said E. and F. their heirs and assigns TO THE USES upon the trusts and with and subject to the powers and provisions declared by and contained in the hereinbefore recited Indenture of Settlement of the ——— day of ——— of and concerning the freehold hereditaments thereby settled or so far as the same uses trusts powers and provisions are now subsisting and capable of taking effect but not so as to increase or multiply charges or powers of charging. PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the said A. or for any other person for the time being entitled to any estate in possession under the limitations of the said Indenture of Settlement of the ——— day of ——— or for any other persons claiming under them or any of them and his and their servants agents and workmen at all times to enter in and upon the said lands with or without horses or other animals carts wagons and other car-

Convey-
ance of
freeholds.
Except the
minerals.

Proviso
respecting
the work-
ing of the
minerals.

Agreement for Sale to Railway Company.

riages and to search for work get and carry away the said minerals, and with full liberty also to sink make and use pits shafts levels air courses and water courses and to lay down and construct railroads and other roads and bridges and to erect engines and other machinery, and also to occupy and use such part of the surface of the said lands as may be required for heaping placing and dressing the said minerals, and to do all works and things necessary or convenient for the purpose of working getting and carrying away the said minerals according to the most approved practice of mining in the district. Provided always that the said A. his heirs or assigns shall pay compensation to the said P. or the owners and occupiers for the time being of the said hereditaments and premises hereby conveyed or of any buildings thereon for all injury or damage occasioned to the said lands or any buildings thereon by reason of the working of the said mines or the exercise of any of the liberties and rights hereby excepted and reserved, the amount of such compensation to be fixed by the decision of two arbitrators to be appointed &c. *see p. 146. (Covenant by B. and C. against incumbrances, see p. 35. Proviso limiting A.'s implied covenant for title; see p. 35. Acknowledgment and undertaking by A. as to title deeds, see p. 35).* IN WITNESS &c.

XXXII.

AGREEMENT for SALE of Freeholds by TENANT for LIFE
to a RAILWAY COMPANY under the LANDS CLAUSES
CONSOLIDATION ACT, 1845 (*m*).

AN AGREEMENT made the ——— day of ———

(*m*) The tenant for life can if preferred sell and convey under the Settled Land Act, 1882. But inasmuch as the Lands Clauses Act provides, on the one hand, for the reinvestment of the purchase money at the expense of the Company, and, on the other hand, gives to the

Company greater facility for taking the land free from questions upon the title and from incumbrances, it seems probable that sales and conveyances will continue to be made under the latter rather than under the former Act, in the interests both of the vendor and of the Company.

Between A. of &c. of the one part and the _____
Railway Company of the other part, WHEREBY IT IS
AGREED as follows :—

1. The said A. shall sell and the said Company shall ^{Parcels and price}
purchase the fee simple in possession free from incum-
brances of All that piece of land and hereditaments
described in the first schedule hereto with the appurten-
ances, of which land and hereditaments the said A. is
tenant for life in possession, at a sum to be fixed by Y. of
&c. land agent and surveyor on behalf of the said A. and
Z. of &c. land agent and surveyor on behalf of the said
Company or by an umpire to be appointed in accordance
with the provisions of the Lands Clauses Consolidation Act,
1845, such sum to be assessed so as to include compensa-
tion for severance of the said land purchased by the said
Company from other adjoining lands of which the said A.
is tenant for life as aforesaid, and for all damage done to
such other lands by the railway and other works of the said
Company, and also all claim in respect of accommodation
works other than those mentioned in the second schedule
hereto.

2. Within _____ days from the date hereof the said ^{Abstract.}
A. shall send to Messrs. _____, the solicitors of
the said Company, an abstract of title to commence with
an Indenture dated &c. The said Company shall not be
entitled to require the production of any earlier title.

3. The purchase money shall be paid into Court on or ^{Comple-}
before the _____ day of _____, and on that day the ^{tion of}
purchase shall be completed at the office of Messrs. ^{purchase.}
_____, the solicitors of the said A. The said A.
will give covenants for title qualified in the usual way, and
the usual acknowledgment and undertaking as to title
deeds.

4. If from any cause whatsoever the purchase money
shall not be paid into Court as aforesaid on the said _____
day of _____ the said Company shall pay to the said A.
interest at the rate of £5 per cent. per annum on the
purchase money until the same shall be so paid into Court.

Company may take possession at once. The said Company shall be at liberty to take possession of the said land and hereditaments at any time hereafter on giving ——— days' notice to the said A., and on paying the purchase money if fixed into Court as aforesaid, or if the purchase money shall not have been then fixed on complying with the provisions of the 85th section of the Lands Clauses Consolidation Act, 1845.

Tenants to be compensated. 5. In addition to the sum to be paid into Court as aforesaid the said Company shall pay compensation to the tenants of the said lands and hereditaments for their rights in the same.

Accommodation works. 6. The said Company shall as soon as practicable construct and for ever afterwards maintain for the accommodation of the said A. and other persons for the time being owners and occupiers of the adjoining lands of which the said A. is tenant for life as aforesaid the several works specified in the second schedule hereto.

Costs. 7. The costs of this agreement and of the conveyance and all other costs charges and expenses incurred in relation to this purchase shall be borne by the said Company in the same manner as on a compulsory taking of land under the Lands Clauses Consolidation Act, 1845. IN WITNESS &c.

XXXIII.

CONVEYANCE of *Freeholds by* TENANT for LIFE to a RAILWAY COMPANY under the LANDS CLAUSES CONSOLIDATION ACT, 1845 (n).

Land required by company. THIS INDENTURE made the ——— day of ——— Between A. of &c. (*tenant for life*) of the one part and The ——— Railway Company of the other part, WHEREAS &c. (*recite the documents under which A. is tenant for life*), AND WHEREAS the said Company have under the powers and provisions of the ——— Railway Act, 18—, and the Lands Clauses Consolidation

(n) See note to Prec. XXXII., p. 60.

Act, 1845, incorporated therewith required for the purposes of their said Act the land and hereditaments specified in the first schedule hereto, being portion of the said lands and hereditaments of which the said A. is seised for an estate during his life as aforesaid, AND WHEREAS the said A. in exercise of the power given to him by the said Lands Clauses Consolidation Act, 1845, has agreed with the said Company for the sale to them of the said land and hereditaments so required by them as aforesaid [and of all the mines and minerals thereunder (o)] ^{Minerals.} free from incumbrances for the sum of £——, which ^{Price.} sum has been fixed by valuation in the manner provided by the said Lands Clauses Consolidation Act, 1845, and is to include compensation for severance of the said land so required from the other adjoining lands of which the said A. is tenant for life as aforesaid, and for all damage done to such other lands by the railway and other works of the said Railway Company, and also all claim in respect of accommodation works other than those hereinafter covenanted to be made by the said Company, AND WHEREAS it has been agreed that the ^{Accommodation works.} said Company shall execute the several works specified in the third schedule hereto for the accommodation of the said A. and other persons for the time being owners and occupiers of the other lands of which the said A. is tenant for life as aforesaid, AND WHEREAS the said ^{Payment into Court.} Company have on the —— day of —— paid the said sum of £—— into the Bank of England to the account of the Paymaster-General for the time being on behalf of the Chancery Division of the High Court of Justice to the credit of Ex parte The —— Railway Company In the matter of the —— Railway Act, 18—, in respect of lands of which A. is tenant for life without power of sale, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— so paid into Court as aforesaid He the said A. as beneficial owner in

(o) Unless expressly included these will not pass, see 8 & 9 Vict. c. 20, s. 77.

Conveyance to Railway Company.

Covenant
by com-
pany to do
accommo-
dation
works.

exercise of the power for this purpose given to him by the Lands Clauses Consolidation Act, 1845, doth hereby convey unto the said Company their successors and assigns ALL those pieces or parcels of land and hereditaments [with the mines and minerals thereunder] situate &c. more particularly described in the first schedule hereto and delineated on the plan drawn on the same schedule and thereon coloured red the numbers in the first column to the same schedule and on the said plan corresponding with the numbers in the books of reference and plans for the said parish of _____ deposited by the said Company, TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO AND TO THE USE of the said Company their successors and assigns for the purposes of their said railway and works. (*Proviso limiting A.'s implied covenants for title, see p. 35, and acknowledgment and undertaking as to title deeds, see p. 35*). AND the said Company do hereby for themselves their successors and assigns covenant with the said A. that they the said Company their successors or assigns will at their own costs and expense as soon as practicable construct in a proper and workmanlike manner and for ever afterwards maintain in good condition and complete repair for the accommodation of the said A. and other persons for the time being owners and occupiers of the other lands of which the said A. is tenant for life as aforesaid the several works specified in the third schedule hereto. IN WITNESS &c.

The first schedule to the above-written Indenture.
(*Parcels.*)

The second schedule to the above-written Indenture.
(*List of Deeds.*)

The third schedule to the above-written Indenture.
(*Accommodation Works.*)

XXXIV.

GRANT of RIGHT of WAY.

THIS INDENTURE made the —— day of —— Between A. of &c. (*grantor*) of the one part and P. of &c. (*grantee*) of the other part, WITNESSETH that in consideration of the sum of £ —— now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby grant unto the said P. his heirs and assigns Full and free right and liberty for him the said P. his heirs and assigns owners for the time being of Blackacre Farm in the parish of —— in the county of —— and his and their agents and servants and the respective tenants and occupiers for the time being of the said Blackacre Farm or any of them and all and every other persons and person for the benefit and advantage of the said P. his heirs or assigns from time to time and at all times hereafter at his and their will and pleasure by day and by night and for all purposes to go return pass and repass with or without horses carts wagons and other carriages laden or unladen and also to drive cattle and other beasts in through and over a certain road which runs and leads from &c. through &c. to &c., the said road being more particularly delineated and shown on the map drawn in the margin of these presents by a dotted line between the points marked A. and B. respectively, To HAVE AND TO HOLD the said right of way UNTO AND TO THE USE of the said P. his heirs and assigns. IN WITNESS &c.

XXXV.

DEED of ENFRANCHISEMENT of COPYHOLDS.

THIS INDENTURE made the —— day of —— Between A. of &c. (*lord of the manor*) of the one part and P. of &c. (*copyholder*) of the other part, WHEREAS at a

Admit-
tance of
copy-
holder.

Agree-
ment for
enfran-
chisement.

Enfran-
chisement
of copy-
holds.

Grant of
rights of
common
&c.

court held for the manor of _____ on the _____ day of _____ the said P. was duly admitted tenant to all &c. (*parcels from the court rolls*) to hold the same to the said P. his heirs and assigns at the will of the lord according to the custom of the said manor at and under the rents fines suits and services therefor due and of right accustomed, AND WHEREAS the said A. has agreed with the said P. for the enfranchisement of the said hereditaments for the sum of £ _____, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ _____ now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby enfranchise and grant unto the said P. and his heirs ALL AND SINGULAR the said hereditaments and premises to which the said P. was admitted as aforesaid TO HAVE AND TO HOLD the hereditaments and premises hereby enfranchised UNTO AND TO THE USE of the said P. his heirs and assigns as freehold freed from all rents fines suits and services and all other incidents of copyhold tenure. AND THIS INDENTURE ALSO WITNESSETH (o) that in further pursuance of the said agreement and for the consideration aforesaid He the said A. as beneficial owner doth hereby grant unto the said P. and his heirs ALL such commonage and right of common in upon and over the wastes and commonable lands of the said manor of _____ as the said P. or any person or persons through whom he claims held enjoyed or was entitled to in respect of and as appurtenant to the said hereditaments and premises hereby enfranchised or any of them and the freehold and inheritance of such commonable rights as aforesaid in like manner as the said P. or his customary heirs could have used or exercised the same rights if the said premises had not been enfranchised, TO HAVE AND TO

(o) These rights should be specially granted if it is intended that the copyholder should retain them

after the enfranchisement. See Scriven Cop. 6th ed., p. 283.

HOLD the said rights and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns. IN WITNESS &c.

XXXVI.

GRANT of an ADVOWSON.

THIS INDENTURE made the —— day of —— Between A. of &c. (*vendor*) of the one part and P. of &c. (*purchaser*) of the other part, WITNESSETH that in consideration of the sum of £ —— now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby grant unto the said P. and his heirs ALL THAT the advowson and perpetual right of presentation of and to the rectory and parish church of —— in the county of ——, To HAVE AND TO HOLD the advowson and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns. IN WITNESS &c.

XXXVII.

GRANT of NEXT PRESENTATION to a RECTORY.

THIS INDENTURE made the —— day of —— Between A. of &c. (*vendor*) of the one part and P. of &c. (*purchaser*) of the other part, WITNESSETH that in consideration of the sum of £ —— now paid by the said P. to the said A., The receipt &c., He the said A. as beneficial owner doth hereby grant unto the said P. his executors administrators and assigns THE RIGHT of the next presentation to the rectory and parish church of —— in the county of —— whenever the same shall next become vacant, To HAVE AND TO HOLD the same unto the said P. his executors administrators and assigns. IN WITNESS &c.

XXXVIII.

ASSIGNMENT OF LETTERS PATENT.

Recital of
letters
patent.

Contract
for sale.

Assign-
ment of
letters
patent.

Covenant
by vendor
that letters
patent are
valid.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*vendor*) of the one part and P. of &c.
(*purchaser*) of the other part, WHEREAS by letters patent
under the great seal of the United Kingdom dated &c.
and numbered &c. and filed &c. the sole and exclusive
license and privilege of manufacturing using exercising
and vending a certain invention for the manufacture of
&c. were granted to the said A. for the term of ———
years, AND WHEREAS on the ——— day of ——— the
said A. duly filed a proper specification of the said inven-
tion pursuant to the condition in that behalf in the said
letters patent contained, AND WHEREAS the said A. has
agreed with the said P. for the sale to him of the said
invention and letters patent and the full benefit and
advantage thereof for the sum of £ ———, NOW THIS
INDENTURE WITNESSETH that in pursuance of
the said agreement and in consideration of the sum of
£ ——— now paid by the said P. to the said A., The
receipt whereof the said A. doth hereby acknowledge, He
the said A. as beneficial owner doth hereby assign unto
the said P. his executors administrators and assigns ALL
the said invention and letters patent and the full benefit
and advantage thereof and of all other letters patent
which may be hereafter obtained in respect thereof and
all rights powers and privileges thereto appertaining, To
HAVE AND TO HOLD the letters patent and premises
hereby assigned UNTO the said P. his executors admini-
strators and assigns. AND the said A. doth hereby cove-
nant with the said P. that the said letters patent are
valid and effectual in the law and not liable to be invali-
dated or avoided. IN WITNESS &c.

XXXIX.

ASSIGNMENT of GOODWILL and STOCK IN TRADE of a
BUSINESS.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*vendor*) of the one part and P. of &c.
(*purchaser*) of the other part, WHEREAS the said A. has Vendor's
business.
for several years past carried on and is now carrying on
the business of a ——— at the house No. ———
in ——— Street in the City of ———, such
house being held by him under an Indenture of Lease
dated &c. for a term of ——— years whereof ———
years are still unexpired, AND WHEREAS the said A. has Contract
for sale.
agreed with the said P. for the sale to him of the good-
will of the said business and of the stock in trade debts
and other effects thereof for the sum of £ ——— upon
the terms and subject to the conditions and provisions
hereinafter contained, AND WHEREAS the said A. has by Assign-
ment of
lease of
premises
by Inden-
ture of
even date.
an Indenture bearing even date with and executed imme-
diately before these presents assigned the said house and
premises being No. ——— in ——— Street afore-
said to the said P. his executors administrators and
assigns for all the residue of the said term of ——— years,
AND WHEREAS the particulars of the debts due and Books of
account.
owing respectively to and from the said A. in respect of
the said business and of the contracts and engagements
which he has entered into appear by the books of account
and other books kept by the said A., which books have
been inspected by and delivered to the said P. as he doth
hereby acknowledge, NOW THIS INDENTURE WIT-
NESSETH that in pursuance of the said agreement and
in consideration of the sum of £ ——— now paid by the
said P. to the said A., The receipt whereof the said A. doth
hereby acknowledge, He the said A. as beneficial owner Assign-
ment of
goodwill
&c.
doth hereby assign unto the said P. his executors admini-
strators and assigns ALL that the goodwill of him the said
A. in the said business of a ———, And also all

Power of
attorney.

Covenant
by vendor
that books
are cor-
rect,

and that
debts are
owing &c.

Vendor
to intro-
duce pur-
chaser,

and not to
trade him-
self.

the book debts and other debts now owing to him in respect of the said business and the securities for such debts and the benefit and advantage thereof, And also all the stock in trade and goods fixtures furniture and other effects of the said A. in the said business or used in or belonging to the same, Together with full and irrevocable (p) power to demand sue for and recover and give effectual receipts for the said debts and premises and every part thereof in the name or names of the said A. his executors or administrators and to execute and do all such instruments and things for recovering the same or otherwise as may be necessary or expedient, To HAVE AND TO HOLD the goodwill and premises hereby assigned UNTO the said P. his executors administrators and assigns. AND the said A. doth hereby covenant with the said P. that the said books of account and other books delivered to the said P. as aforesaid contain true full and sufficient particulars of all the debts due and owing respectively to and from the said A. and of all the contracts and engagements entered into by him in respect of the said business, and that such debts are still owing and such contracts and engagements still subsisting except as appears from the said books, and that he the said A. has not received assigned released or discharged any of the said debts and premises or done or suffered anything whereby the same or any of them may be impeached discharged incumbered or in any way affected: AND that the said A. will use his best endeavours to put the said P. his executors administrators and assigns in possession of the full benefit and advantage of the said goodwill by introducing and recommending him and them to the customers and connections of the said A. in the said business: AND FURTHER that he the said A. will not at any time hereafter either by himself or in partnership with any other person or persons or as agent or servant for any person or persons directly or indirectly carry on or be engaged or interested in carrying on the business of

(p) See Conveyancing Act, 1882, s. 8, p. 323.

a ——— within ——— miles of ———
aforesaid. AND THIS INDENTURE ALSO WIT-
NESSETH that in further pursuance of the said agree-
ment and in consideration of the premises he the said P.
doth hereby covenant with the said A. that he the said
P. his heirs executors or administrators will at all times
hereafter keep indemnified the said A. his heirs executors
and administrators and his and their estates and effects
against all and every the debts contracts and engagements
due from or entered into by the said A. as appears from
the said books and against all actions damages costs
claims and demands whatsoever on account of such
debts contracts and engagements respectively. IN WIT-
NESS &c.

Covenant
by pur-
chaser to
indemnify
vendor
against
debts &c.

XL.

CONVEYANCE of FREEHOLDS with a MANUFACTORY
thereon and of LEASEHOLDS held therewith by the
TRUSTEE of a BANKRUPT and his FIRST and SECOND
MORTGAGEES to a LIMITED COMPANY (q).

THIS INDENTURE made the ——— day of ———
Between X. of &c. (*trustee in bankruptcy*) of the 1st part A.
of &c. (*bankrupt*) of the 2nd part M. of &c. (*1st mortgagee*)
of the 3rd part The ——— Joint Stock Banking Company
Limited hereinafter called the Banking Company (*2nd mort-
gagees*) of the 4th part and The ——— Company Limited
(*purchasers*) of the 5th part, WHEREAS by an Indenture
of Lease dated &c. and made between (*lessor*) of the one
part and the said A. of the other part ALL &c. (*parcels
from the lease*) with the appurtenances were demised by
the said (*lessor*) unto the said A. his executors adminis-
trators and assigns for the term of ——— years from the
——— day of ——— at the yearly rent of £ ——— and
subject to the covenants and conditions therein contained
and on the part of the lessee to be observed and performed,
AND WHEREAS by an Indenture dated &c. and made

Recital of
lease.

Recital of

(q) See Bankruptcy Act, 1869, 32 & 33 Vict. c. 71, ss. 22-25.

Conveyance of a Manufactory.

first mort-
gage.

between the said A. of the one part and the said M. of the other part the said A. granted unto and to the use of the said M. his heirs and assigns the freehold piece of land with the manufactory and buildings thereon known as the " ——— Factory" hereinafter more particularly described and intended to be hereby granted at which the said A. carried on the business of ——— subject nevertheless to the proviso for redemption hereinafter contained, And by the same Indenture the said A. demised unto the said M. his executors administrators and assigns the piece of land and premises comprised in and demised by the hereinbefore recited Indenture of Lease with the appurtenances for all the residue of the said term of ——— years except the last three days thereof subject nevertheless to the proviso for redemption hereinafter contained, And by the same Indenture now in recital the said A. assigned unto the said M. his executors administrators and assigns all the machinery engines plant stock in trade utensils and other articles which then were or which might at any time thereafter during the continuance of the security thereby created be in or upon or belonging to the said factory and premises thereby granted and demised respectively subject nevertheless to the proviso for redemption hereinafter contained: And the same Indenture now in recital contained a proviso for the redemption of the freehold and leasehold hereditaments and machinery and premises on payment by the said A. his heirs executors administrators or assigns of the sum of £5000 on the ——— day of ——— with interest at the rate of £5 per cent. per annum on the days and in manner therein mentioned, AND WHEREAS by an Indenture dated &c. and made between the said A. of the one part and the said Banking Company of the other part the said A. granted unto and to the use of the said Banking Company their successors and assigns the aforesaid freehold hereditaments and factory and premises and by the same Indenture the said A. demised unto the said Banking Company their successors and assigns the aforesaid leasehold premises for all the residue of the said

Recital
of second
mortgage
to secure
current
account
with bank.

term of ——— years except the last ten days thereof and by the same Indenture the said A. assigned unto the said Banking Company their successors and assigns the machinery engines plant stock in trade utensils and other articles which then were or which might at any time thereafter during the continuance of the security thereby created be in or upon or belonging to the said factory and premises, subject as to all the aforesaid freehold and leasehold hereditaments and machinery and premises to the hereinbefore recited Indenture of Mortgage of the ——— day of ——— and subject also to the proviso for redemption hereinafter contained, And the same Indenture now in recital contained a proviso for the redemption of the said freehold and leasehold hereditaments and machinery and premises on payment by the said A. his executors administrators and assigns to the said Banking Company their successors and assigns of all moneys not exceeding £ ——— which at the time of the said Banking Company enforcing their security might be owing to them on account current from the said A., AND WHEREAS there is now owing to the said M. on the security of the hereinbefore recited Indenture of Mortgage of the ——— day of ——— the principal sum of £5000 together with the sum of £500 for interest thereon making together the sum of £5500, AND WHEREAS there is now owing to the said Banking Company on the security of the hereinbefore recited Indenture of Mortgage of the ——— day of ——— the sum of £7920 on the account current of the said A., AND WHEREAS by an order made by the London Court of Bankruptcy [or, by the County Court of ———] dated the ——— day of ——— the said A. was adjudicated a bankrupt, AND WHEREAS the said X. was on the ——— day of ——— duly appointed to be the trustee of the estate and effects of the said bankrupt, AND WHEREAS the said X. as such trustee has agreed with the said ——— Company Limited for the sale to them free from incumbrances of the aforesaid freehold and leasehold lands and hereditaments and factory and of the aforesaid

Amounts owing on the mortgages.

Bankruptcy proceedings.

Contract for sale

Conveyance of a Manufactory.

machinery stock in trade and other articles belonging to the said factory for the sum of £20,000, out of which it has been agreed that the aforesaid sum of £5500 shall be paid to the said M. and the aforesaid sum of £7920 to the said Banking Company in discharge of their respective securities and upon their joining in these presents in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £5500 now paid by the said ——— Company Limited to the said M., The receipt whereof the said M. doth hereby acknowledge, and in consideration of the sum of £7920 now paid by the said ——— Company Limited to the said Banking Company, The receipt whereof the said Banking Company do hereby acknowledge, and in consideration of the sum of £6580 now paid by the said ——— Company Limited to the said X., The payment and receipt respectively of which said several sums of £5500 £7920 and £6580 in manner aforesaid making together the sum of £20,000 the said X. and the said A. do hereby respectively acknowledge, He the said M. as mortgagee at the request and by the direction of the said X. and of the said A. doth hereby grant surrender assign and release, And the said Banking Company as mortgagees at the like request and direction do hereby grant surrender assign and release, And he the said X. as trustee doth hereby grant and assign, And he the said A. as beneficial owner (r) doth hereby grant assign and confirm unto the said ——— Company Limited their successors and assigns ALL &c. (*parcels of freeholds with the factory*), AND ALSO ALL AND SINGULAR the piece of land and premises comprised in and demised by the hereinbefore recited Indenture of Lease of the ——— day of ———, AND ALSO ALL AND SINGULAR the machinery engines plant stock in trade utensils and other articles which now are in or upon or belonging to the said factory and

Convey-
 ance of
 freeholds.
 Lease-
 holds.

Machinery
 &c.

(r) There is no objection to taking they are worth.
 the bankrupt's covenants for what

premises, TO HAVE AND TO HOLD the freehold hereditaments and premises hereby granted UNTO AND TO THE USE of the said ——— Company Limited their successors and assigns, AND TO HAVE AND TO HOLD the leasehold hereditaments and premises hereby surrendered and assigned UNTO the said ——— Company Limited their successors and assigns for all the residue of the said term of ——— years created by the hereinbefore recited Indenture of Lease and to the intent that the said terms created by the hereinbefore recited Indentures of Mortgage of the ——— day of ——— and the ——— day of ——— respectively may be merged and extinguished in the said term of ——— years, nevertheless at the rent reserved by the said Indenture of Lease and under and subject to the covenants and conditions therein contained and on the part of the lessee to be observed and performed, AND TO HAVE AND TO HOLD the machinery and other articles hereby assigned UNTO the said ——— Company Limited their successors and assigns absolutely, AND as to all the freehold and leasehold hereditaments and premises machinery and other articles hereby granted surrendered and assigned respectively FREED AND DISCHARGED from the said sums of £5000 and £7920 respectively and all interest for the same and all moneys secured by and all claims and demands under the hereinbefore recited Indentures of Mortgage of the ——— day of ——— and the ——— day of ——— respectively or either of them. IN WITNESS &c.

XLI.

MORTGAGE of FREEHOLDS to persons lending money belonging to them on a JOINT ACCOUNT, with provisions for reduction of interest and for continuance of loan.

Agreement for loan.

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*mortgagor*) of the one part and B. of &c. and C. of &c. (*mortgagees*) of the other part, WHEREAS &c. (*recite A's title to the property*), AND WHEREAS the said A. has applied to the said B. and C. to lend him the sum of £—— which the said B. and C. have agreed to do out of moneys belonging to them on a joint account on having the repayment thereof with interest secured in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said B. and C. out of moneys belonging to them on a joint account (s) to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner (t) doth hereby grant unto the said B. and C. and their heirs ALL &c. (*parcels*), To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said B. and C. their heirs and assigns, SUBJECT nevertheless to the proviso for redemption hereinafter contained. PROVIDED ALWAYS and it is hereby agreed and declared that if the said A. his heirs executors administrators or assigns shall on the ——— day of ——— (*six months after the date of the mortgage*) pay to the said B. and C. or the persons claiming under them the sum of £—— with interest for the same at the rate of £5 per cent. per annum from

Proviso for redemption.

(s) See Conveyancing Act, 1881, s. 61, p. 299.

(t) See same Act, s. 7, subs. 1, C, p. 253.

the date of these presents then the said B. and C. or the persons claiming under them shall at any time thereafter upon the request and at the cost of the said A. his heirs or assigns reconvey the hereditaments and premises hereby mortgaged unto and to the use of the said A. his heirs and assigns or as he or they shall direct. AND the said A. doth hereby covenant with the said B. and C. that he the said A. his heirs executors or administrators will on the said ——— day of ——— pay unto the said B. and C. or the persons claiming under them the aforesaid sum of £ ——— with interest thereon at the rate of £5 per cent. per annum from the date of these presents: AND further that if the said principal sum of £ ——— shall not be paid on the said ——— day of ——— then he the said A. his heirs executors or administrators will on the ——— day of ——— and the ——— day of ——— in every year pay interest at the rate of £5 per cent. per annum on the said sum of £ ——— or on so much thereof as shall for the time being remain owing until the whole of the said principal sum shall be fully paid and satisfied. PROVIDED ALWAYS that if the said A. his heirs executors administrators or assigns shall within thirty days after the half-yearly days hereinbefore appointed for payment of interest pay to the said B. and C. or the persons claiming under them interest for the said sum of £ ——— or for such part thereof as shall for the time being remain owing at the rate of £4 per cent. per annum then the said B. and C. or the persons claiming under them shall accept interest for the said sum of £ ——— or such part thereof as shall be owing at such last mentioned rate for every half year for which such interest shall be paid within the time aforesaid. PROVIDED ALWAYS and it is hereby agreed and declared that if and so long as the said A. his heirs executors administrators or assigns shall regularly pay to the said B. and C. or the persons claiming under them interest as hereinbefore provided on the said sum of £ ——— or on such part thereof as shall for the time being remain owing and shall also duly observe and per-

Covenant
for pay-
ment of
principal,

and inte-
rest.

Proviso for
reduction
of interest.

For con-
tinuance
of loan.

Mortgage of Freeholds.

form the covenants herein contained on his and their part
 Then and in such case the said B. and C. or the persons
 claiming under them shall not call in or take any steps to
 enforce payment of the said sum of £ ——— or any part
 thereof by exercising the power of sale hereinafter con-
 tained or otherwise howsoever before the ——— day of
 ———: PROVIDED ALSO that the said B. and C. and the
 persons claiming under them shall not be compelled to
 accept payment of the said sum of £ ——— or any
 part thereof before the said ——— day of ———:
 [or Then and in such case the said B. and C. and the
 persons claiming under them will accept payment of the said
 sum of £ ——— in the following instalments, that is to
 say, the sum of £ ——— on the ——— day of ———
 which shall be in the year ———, the sum of £ ———
 on the ——— day of ——— which shall be in the year
 ——— &c.]. PROVIDED ALWAYS (u) and it is hereby
 agreed and declared that if the principal money and
 interest hereby secured or any part thereof shall not be
 paid on the said ——— day of ——— (*the time first
 appointed for payment*) it shall be lawful for the said B.
 and C. or the persons claiming under them at any time or
 times thereafter without any further consent on the part
 of the said A. his heirs or assigns to sell the said heredita-
 ments and premises hereby mortgaged or any part or parts
 thereof either together or in parcels and by public auction
 or private contract and under such special or other con-
 ditions or terms with respect to title or otherwise as they
 or he shall think fit, And to buy in the same heredita-
 ments and premises or any part thereof at any public sale
 and to rescind or vary any contract for sale and to resell
 without being responsible for any loss or expense to be
 occasioned thereby, And also to execute and do all proper
 assurances and things for the purpose of any such sale.
 PROVIDED ALWAYS that the power of sale hereinbefore

For pay-
 ment off
 by in-
 stalments.

Power of
 sale.

Six
 months'

(u) This power of sale may be omitted if it is preferred to rely on the power of sale given by the Conveyancing Act, 1881, ss. 19, 20, 21 22, pp. 269, 271.

contained shall not be exercised until six months' notice in writing requiring payment of the money owing on the security of these presents shall have been given to the said A. his heirs executors or administrators or left upon some part of the hereditaments hereby mortgaged, and at the expiration of such notice default shall be made in payment of such money or some part thereof, or unless and until any interest shall be in arrear for three calendar months after the times hereinbefore appointed for payment thereof (x). AND IT IS HEREBY DECLARED that the receipts in writing of the said B. and C. or the persons claiming under them shall be good and sufficient discharges for the purchase moneys thereby acknowledged to be received and shall exonerate the purchaser or purchasers from seeing to the application thereof, nor shall any purchaser be bound to inquire whether default shall have been made in payment of any principal money or interest or whether notice shall have been given as aforesaid or whether any special or other conditions of sale under which the said hereditaments and premises or any part thereof shall be sold are necessary nor shall any purchaser be in any manner prejudiced or affected although in fact no default may have been made or notice given or no such conditions of sale may be necessary. AND IT IS HEREBY DECLARED that the moneys to arise by any such sale as aforesaid and any rents and profits of the said hereditaments and premises received previously thereto shall after payment thereof of all costs and expenses attending such sale or otherwise to be incurred in the execution of any of the powers of these presents be applied in or towards payment and satisfaction of all principal money and interest for the time being owing on the security of these presents and the residue if any of the said moneys rents and profits shall be paid to the said A. his heirs or assigns. AND IT IS HEREBY DECLARED that the power

notice to mortgagor before sale.

Clauses for protection of purchaser.

Trusts of purchase money.

(x) The Conveyancing Act, 1881, after three months' notice or if interest is in arrear for two months.

Persons
entitled to
exercise
power of
sale

not to be
liable for
losses.

Proviso
excluding
ss. 17 and
18 of the
Convey-
ancing
Act, 1881.

of sale hereinbefore contained and all other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys for the time being owing on the security of these presents, And he or they shall not be liable for any losses which may arise in the exercise of the aforesaid powers and trusts or any of them unless the same shall arise through his or their own wilful neglect or default. PROVIDED ALWAYS and it is hereby agreed and declared that the provisions of the 17th section of the Conveyancing and Law of Property Act, 1881, and of the 18th section sub-s. 1 of the same Act shall not apply to this mortgage (y) but it shall be lawful for the said A. his heirs and assigns provided he or they shall be in possession of the said hereditaments and premises hereby mortgaged or in receipt of the rents and profits thereof from time to time to demise the said hereditaments and premises or any part or parts thereof for any term of years not exceeding twenty-one years to take effect in possession at the best yearly rent to be incident to the reversion that can be reasonably obtained without taking anything in the nature of a fine or premium and so that there be contained in every such lease a condition of re-entry for non-payment of rent and so that the lessee execute a counterpart of such lease and thereby covenant for the due payment of the rent (z). IN WITNESS &c.

(y) Sect. 17 restricts consolidation of mortgages. Sect. 18 confers upon the mortgagor and mortgagee when respectively in possession the power of making leases. The power thereby conferred on the mortgagor is somewhat larger than that commonly inserted in mortgages, and it may therefore be deemed desirable to exclude it, in which case a power to lease may be specially given to the mortgagor as above.

(z) A covenant by the mortgagor to insure, see p. 89, may be inserted, if desired. The mortgagee has power under s. 19 of the Conveyancing Act,

1881, to insure, to appoint a receiver, and to cut timber, subject as therein provided. An attornment clause, as follows, is sometimes added, where the mortgagor remains in possession, but under the Bills of Sale Act, 41 & 42 Vict. c. 31, s. 6, this will have to be registered: "AND for the consideration aforesaid the said A. doth hereby attorn and become tenant to the said B. and C. their heirs and assigns of the said hereditaments and premises hereby mortgaged as tenant from year to year from the date of these presents at the yearly rent of £—— payable

XLII.

MORTGAGE of FREEHOLDS to one person. SHORT FORM.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*mortgagor*) of the one part and M. of
&c. (*mortgagee*) of the other part, [WHEREAS the said A. is ^{Recital of}
seised for an estate of inheritance in fee simple in possession ^{seisin of}
free from incumbrances of the freehold hereditaments ^{mortgagor.}
hereinafter granted (a), AND WHEREAS the said A. has ^{Agree-}
applied to the said M. to lend him the sum of £—— ^{ment for}
which the said M. has agreed to do on having the repay- ^{loan.}
ment thereof with interest secured in manner hereinafter
appearing, NOW THIS INDENTURE] WITNESSETH
that [in pursuance of the said agreement and] in considera-
tion of the sum of £—— now paid by the said M. to
the said A., The receipt whereof the said A. doth hereby
acknowledge, He the said A. as beneficial owner doth
hereby grant unto the said M. and his heirs ALL &c. ^{Grant of}
(*parcels*), To HAVE AND TO HOLD the premises hereby ^{freeholds.}
granted UNTO AND TO THE USE of the said M. his heirs
and assigns. PROVIDED ALWAYS that if the said A. his ^{Proviso}
heirs executors administrators or assigns shall on the ^{for re-}
—— day of —— (*six months after the date of the* ^{demption.}
mortgage) pay to the said M. or the persons claiming
under him the sum of £—— with interest for the
same at the rate of £5 per cent. per annum from the

quarterly on the —— day of ——
&c. in every year. Provided always
that it shall be lawful for the said
B. and C. their heirs or assigns at
any time after the said —— day
of —— and without giving any
notice to enter upon the said heredi-
taments and premises whereof the
said A. hath attorned tenant as
aforesaid and to take possession
thereof and thereupon to determine
the tenancy created by the afore-

said attornment." As to the amount
of rent which may be reserved, see
Exp. Jackson, L. R. 14 Ch. D. 725;
as to the position of a mortgagee
under an attornment clause, see *In*
re Stockton Iron Furnace Co., 10 Ch.
D. 335, *Exp. Punnett*, 16 Ch. D.
226, and *Exp. Harrison*, *In re Betts*,
18 Ch. D. 127.

(a) This mortgage may be further
shortened by omitting the words
within brackets, see note g, p. 13.

Deed of Further Charge.

Covenant
by mort-
gagor for
payment
of princi-
pal,

and
interest.

date of these presents then the said M. or the persons claiming under him shall at any time thereafter upon the request and at the cost of the said A. his heirs or assigns reconvey the hereditaments and premises hereby mortgaged unto and to the use of the said A. his heirs and assigns or as he or they shall direct. AND the said A. doth hereby covenant with the said M. that he the said A. his heirs executors or administrators will on the said ——— day of ——— pay unto the said M. or the persons claiming under him the aforesaid sum of £—— with interest thereon at the rate of £5 per cent. per annum from the date of these presents: AND further that if the said principal sum of £—— shall not be paid on the said ——— day of ——— then he the said A. his heirs executors or administrators will on the ——— day of ——— and the ——— day of ——— in every year pay interest at the rate of £5 per cent. per annum on the said sum of £—— or on so much thereof as shall for the time being remain owing until the whole of the said principal sum shall be fully paid and satisfied. IN WITNESS &c.

 XLIII.

DEED of FURTHER CHARGE by INDORSEMENT (a).

Amount
owing.

Agree-
ment for
further
loan.

THIS INDENTURE made the ——— day of ——— Between the within-named A. of the one part and the within-named M. of the other part, WHEREAS the within-mentioned sum of £1000 is still owing to the said M. on the security of the within-written Indenture together with interest from the ——— day of ——— last, AND WHEREAS the said A. has requested the said M. to lend him the further sum of £500 which the said M. has agreed to do on having the repayment thereof with interest secured in manner hereinafter appearing, NOW THIS INDENTURE WIT-

(a) If more convenient this deed may be made supplemental or annexed under s. 53 of the Con-

veyancing and Law of Property Act, 1881, see p. 297.

NESSETH that in pursuance of the said agreement and
 in consideration of the sum of £500 now paid by the said
 M. to the said A., The receipt whereof the said A. doth
 hereby acknowledge, He the said A. doth hereby covenant Covenant
for pay-
ment of
further
loan,
 with the said M. that he the said A. his heirs executors or
 administrators will on the ——— day of ——— next (b)
 pay unto the said M. or the persons claiming under him
 the aforesaid sum of £500 with interest thereon at the
 rate of £5 per cent. per annum from the date of these
 presents: AND further that if the said principal sum of with
interest.
 £500 shall not be paid on the said ——— day of ———
 then he the said A. his heirs executors or administrators
 will on the ——— day of ——— (b) and the ——— day of
 ——— (b) in every year pay interest on the said sum of
 £500 or on so much thereof as shall for the time being re-
 main owing until the whole of the said principal sum shall
 be fully paid and satisfied. AND IT IS HEREBY AGREED Security
given by
the mort-
gage to
extend to
further
loan.
 AND DECLARED that all and singular the land and here-
 ditaments comprised in the within-written Indenture shall
 be charged with the payment to the said M. his executors
 administrators and assigns of both the said principal sums
 of £1000 and £500 and the interest thereof respectively
 and shall not be redeemable until both the said principal
 sums and the interest thereof respectively shall be fully
 paid and satisfied, AND FURTHER that the power of sale
 and other powers and provisions contained in the within-
 written Indenture for securing payment of the said prin-
 cipal sum of £1000 and the interest thereof shall extend
 to the said further sum of £500 and the interest thereof
 for the purpose of securing and raising both the same
 sums and interest. IN WITNESS &c.

(b) These should be the same days deed for payment of interest.
 as those named in the mortgage

XLIV.

RECONVEYANCE of FREEHOLDS by EXECUTORS (c) of
Mortgagee by Indorsement.

THIS INDENTURE made the ——— day of ———
Between B. of &c. and C. of &c. of the one part and the
Will of within-named A. (*mortgagor*) of the other part, WHEREAS
mortgagee. the within-named M. (*mortgagee*) duly made and executed
his last will dated &c. and thereby appointed the said B.
Death and and C. and also D. executors thereof, AND WHEREAS the
probate. said M. died on the ——— day of ——— without having
revoked or altered his said will, which was on the ———
day of ——— duly proved in the ——— Registry of the
Probate Division of the High Court of Justice by the said B.
and C. alone, the said D. having renounced probate thereof,
Amount AND WHEREAS the within-mentioned principal sum of
owing. £——— is still owing on the security of the within-written
Indenture but all interest thereon has been paid up to the
date hereof, AND WHEREAS the said A. is desirous of paying
off the said sum of £——— and of having the hereditaments
comprised in the within-written Indenture reconveyed in
manner hereinafter appearing, NOW THIS INDEN-
TURE WITNESSETH that in consideration of the sum
of £——— now paid by the said A. to the said B. and C.,
The receipt whereof the said B. and C. do hereby acknow-
ledge, They the said B. and C. as personal representatives
of the said M. deceased (d) in exercise of the power for this
purpose given to them by the Conveyancing and Law of
Property Act, 1881, and of all other powers if any enabling
them in this behalf do and each of them doth hereby
convey unto the said A. and his heirs ALL AND SINGULAR

(c) See Vendor and Purchaser Act, 1874, s. 4, p. 6. This section still applies in cases of death before the 1st Jan., 1881. It is not confined to the case of a mortgagee dying intestate as to his mortgage estate, see Dart's V. & P. 5th Ed. p. 16. It has however been held not to apply

to a transfer of a mortgage, see *Re Spradbery's Mortgage*, L. R. 14 Ch. D. 514. The Conveyancing Act, 1881, s. 30, applies in cases of death after the 1st Jan., 1881, see p. 280.

(d) See Conveyancing Act, 1881, s. 7, subs. 1, F, p. 256.

the hereditaments and premises comprised in the within-written Indenture and thereby granted by way of mortgage as security for the said sum of £—— and interest, TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO AND TO THE USE of the said A. his heirs and assigns, FREED and discharged from the said principal sum of £—— and all moneys and interest secured by and all claims and demands under the within-written Indenture. IN WITNESS &c.

 XLV.

MORTGAGE of COPYHOLDS.

THIS INDENTURE made the —— day of —— Between A. of &c. (*mortgagor*) of the one part and M. of &c. (*mortgagee*) of the other part, WHEREAS &c. (*recite A.'s title to copyholds*), AND WHEREAS &c. (*recite agreement for loan, see p. 81*), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said M. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. doth hereby covenant with the said M. that he the said A. or his heirs and all other necessary parties if any will forthwith at his and their own costs and charges surrender or cause to be surrendered into the hands of the Lord of the Manor of —— according to the custom of the said Manor ALL &c. (*parcels*), TO THE USE of the said M. his heirs and assigns, To be holden at the will of the lord according to the custom of the said Manor by and under the rents fines suits and services therefor due and of right accustomed, SUBJECT nevertheless to a proviso for making void the said surrender on payment by the said A. his heirs executors administrators or assigns to the said M. or the persons claiming under him of the said sum of £—— with interest for the same at the rate of £5 per cent. per annum from the date of these presents: AND that in the

Proviso
for re-
demption.

meantime and until such surrender shall have been made the said A. and his heirs will stand seised or possessed of the said hereditaments and premises hereby covenanted to be surrendered In trust for the said M. and the persons claiming under him subject to redemption as aforesaid. (*Covenant by A. for payment of principal and interest, power of sale &c. as in Precedent XLI., using the words "surrender" and "covenanted to be surrendered," instead of the words "grant" and "granted" respectively*). AND (e) the said A. doth hereby covenant with said M. that he the said A. now hath in himself good right to surrender the hereditaments and premises hereby covenanted to be surrendered to the use of the said M. his heirs and assigns in manner aforesaid: AND also that if default shall be made in payment of the said principal sum of £—— or any part thereof or of any interest contrary to the aforesaid agreement for payment of the same then and in such case it shall be lawful for the said M. or the persons claiming under him at any time or times thereafter into and upon the said hereditaments and premises or any part thereof to enter and the same thenceforth peaceably and quietly to hold and enjoy and to receive the rents and profits thereof without any lawful eviction claim or demand by any person or persons whomsoever: AND free from all incumbrances: AND that the said A. and his heirs and all other persons having or lawfully claiming any estate right title or interest in the said hereditaments and premises or any part thereof will at all times hereafter at his and their own costs do and execute or cause to be done and executed all such deeds things and assurances for further and better assuring the said hereditaments and premises to the use of the said M. his heirs and assigns in manner aforesaid as may be reasonably required. IN WITNESS &c.

Right to
surrender.

Quiet
enjoyment
after
default.

Free from
incum-
brances.
Further
assurance.

(e) As to the insertion of these covenants see note to Conveyancing Act, 1881, s. 7, suba. 5, p. 258.

XLVI.

CONDITIONAL SURRENDER of COPYHOLDS *pursuant to the Covenant in the preceding Precedent.*

The Manor of ————— } BE IT REMEMBERED
 in the County of ————— } that on the ——— day of ———
 A. of &c. came before S. of &c. the Steward of the said
 Manor and in consideration of the sum of £——— to him
 the said A. paid by M. of &c., The receipt whereof the said
 A. doth hereby acknowledge, did out of Court surrender
 into the hands of the Lord of the Manor by the hands
 and acceptance of the said S. according to the custom of
 the said Manor ALL &c. (*parcels*), To which hereditaments
 and premises the said A. was at a Court held for the said
 Manor on the ——— day of ——— admitted tenant, To
 THE USE of the said M. his heirs and assigns, at the will of
 the lord according to the custom of the said manor at and
 under the rents fines suits and services therefor due and of
 right accustomed, SUBJECT nevertheless to this condition
 that if the said A. his heirs executors administrators or
 assigns shall on the ——— day of ——— pay to the said
 M. or the persons claiming under him the sum of £———
 with interest for the same in the meantime at the rate of
 £5 per cent. per annum then and in such case this sur-
 render shall be void and of no effect otherwise the same
 shall remain in full force and virtue.

This surrender was taken and accepted
 the day and year first above written by me.

S.

Steward of the said Manor.

Warrant of Satisfaction.

XLVII.

WARRANT to enter up SATISFACTION on a Conditional Surrender (g).

The Manor of _____ } I M. of &c. (*mortgagee*) do
in the County of _____. } hereby acknowledge that I
have received from A. of &c. the sum of £_____ in
satisfaction of all principal money and interest owing to
me on the security of a conditional surrender dated &c.
and made to me by the said A. of certain copyhold here-
ditaments therein described held of the said manor: And
I hereby authorise and direct the steward of the said
manor to enter satisfaction thereof on the rolls of the said
manor and for so doing this shall be his sufficient warrant
and authority.

Dated this _____ day of _____

(Signed)

A.

XLVIII.

MORTGAGE of LEASEHOLDS by demise (h).

THIS INDENTURE made the _____ day of _____
Between A. of &c. (*mortgagor*) of the one part and M. of

(g) On a mortgage of copyholds it is usual for the mortgagee not to be admitted, in order to avoid payment of the fines. A warrant to enter up satisfaction is then the proper mode of discharging the security.

(h) A mortgage of leaseholds is usually made by demise and not by assignment, in order that the mortgagee may not become directly liable to the lessor under the covenants contained in the lease for payment of rent &c.

&c. (*mortgagee*) of the other part, WHEREAS &c. (*recite A.'s title to the leaseholds, see p. 16*), AND WHEREAS &c. (*recite agreement for loan, see p. 81*), NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said M. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby demise unto the said M. his executors administrators and assigns ALL AND SINGULAR the messuage or dwelling-house and premises comprised in and demised by the hereinbefore recited Indenture of Lease of the —— day of ——, To HAVE AND TO HOLD the messuage and premises hereby demised UNTO the said M. his executors administrators and assigns for all the residue of the said term of —— years except the last three days thereof. PROVIDED ALWAYS that if the said A. his executors administrators or assigns shall on the —— day of —— (*six months from the date of the mortgage*) pay to the said M. his executors administrators or assigns the sum of £—— with interest for the same at the rate of £5 per cent. per annum from the date of these presents then the said M. his executors administrators or assigns shall at any time thereafter upon the request and at the cost of the said A. his executors administrators or assigns surrender the said messuage and premises hereby mortgaged unto the said A. his executors administrators and assigns or as he or they shall direct. (*Covenant by A. for payment of principal and interest, see p. 82*): AND ALSO that he the said A. his executors administrators or assigns will at all times during the continuance of this security keep the said messuage and buildings on the said premises insured against loss or damage by fire in the sum of £—— at the least in the joint names of him or them and of the said M. his executors administrators or assigns in the —— Insurance Office or some other office or offices to be approved by the said M. his executors administrators or assigns, And will duly pay all premiums and sums of money payable in respect of such insurance

Demise of
leaseholds

Proviso
for re-
demption.

Covenant
to insure.

*Surrender of Mortgage Term.*Power of
sale.

and will on demand produce to the said M. his executors administrators or assigns the policy or policies of such insurance and the receipts for such payments (i): *(A power of sale can be added if desired as in a mortgage of freeholds, p. 78, mutatis mutandis. The following proviso should however be inserted as applicable to a sale whether under the deed or under sect. 19 of the Conveyancing Act, 1881).* PROVIDED ALWAYS and it is hereby agreed and declared that in the event of any sale by the said M. his executors administrators or assigns the said A. his executors administrators and assigns will thereupon stand possessed of the last three days of the said term of ——— years in the said messuage and premises or such part thereof as may be so sold in trust for the purchaser or purchasers thereof. IN WITNESS &c.

XLIX.

*SURRENDER of MORTGAGE TERM on payment
of Mortgage debt by indorsement.*

THIS INDENTURE made the ——— day of ——— Between the within-mentioned M. of the one part and the within-mentioned A. of the other part, WHEREAS &c. (*recite amount owing and desire of A. to pay off debt, see p. 84*), NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ ——— now paid by the said A. to the said M., The receipt whereof the said M. doth hereby acknowledge, He the said M. as mortgagee (k) doth hereby surrender unto the said A. his executors administrators and assigns ALL AND SINGULAR the messuage and hereditaments comprised in the within-written

(i) Power to the mortgagee to insure if the mortgagor does not keep up the insurance in accordance with this covenant is given by the Conveyancing Act, 1881, s. 19 (ii), and s. 23. The same sect. provides

for the application of the insurance money in making good the damage or towards discharge of the mortgage at the option of the mortgagee.

(k) See Conveyancing Act, 1881, s. 7, subs. 1, F, p. 256.

Indenture and thereby demised by way of mortgage as security for the said sum of £——— and interest, To the intent that the residue of the term of —— years granted by the within-written Indenture may merge and be extinguished in the reversion expectant upon the same term of years and that the said messuage hereditaments and premises hereby surrendered may be freed and discharged from the said principal sum of £ —— and all moneys and interest secured by and all claims and demands under the within-written Indenture. IN WITNESS &c.

L.

MORTGAGE of an EQUITY of REDEMPTION.

THIS INDENTURE made the —— day of —— Between A. of &c. (*mortgagor*) of the one part and M. of &c. (*mortgagee*) of the other part, WHEREAS by an Indenture dated &c. and made between the said A. of the one part and B. and C. of the other part the hereditaments hereinafter described and intended to be hereby granted were granted by the said A. unto and to the use of the said B. and C. their heirs and assigns subject to the proviso therein contained for the redemption of the same hereditaments on payment by the said A. his heirs executors administrators or assigns to the said B. and C. or the survivor of them or the executors or administrators of such survivor their or his assigns of the sum of £1000 on the —— day of —— with interest at the rate of £5 per cent. per annum on the days and in manner therein mentioned, AND WHEREAS the said principal sum of £1000 together with interest thereon from the —— day of —— is now owing to the said B. and C. on the security of the aforesaid Indenture of Mortgage, AND WHEREAS the said A. has applied to the said M. to lend him the sum of £ —— which the said M. has agreed to do on having the repayment thereof with interest secured in manner

Recital
of first
mortgage.

Agreement for
second
mortgage.

hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said M. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner (l) doth hereby grant unto the said M. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said M. his heirs and assigns, SUBJECT to the aforesaid Indenture of Mortgage of the —— day of —— and to all principal money and interest thereby secured, AND SUBJECT also to the proviso for redemption hereinafter contained. (*Proviso for redemption, see p. 81. Covenant by A. for payment of principal and interest, see p. 82*). PROVIDED ALWAYS and it is hereby agreed and declared that the provisions of the 17th section of the Conveyancing and Law of Property Act, 1881, shall not apply to this mortgage (m). IN WITNESS &c.

Grant of
freeholds.

Subject to
the first
mortgage.

Proviso
for re-
demption.

LI.

MORTGAGE of LIFE ESTATE in FREEHOLDS and POLICY of ASSURANCE.

THIS INDENTURE made the —— day of —— Between A. of &c. (*mortgagor*) of the one part and M. of &c. (*mortgagee*) of the other part, WHEREAS &c. (*recite the documents under which A. is entitled to the hereditaments for an estate during his life without impeachment of waste free from incumbrances*), AND WHEREAS the said A. is possessed of a policy of assurance on his life effected in

Title to
life estate
in free-
holds.

Title to
policy.

(l) The implied covenants under the Conveyancing Act, 1881, s. 7, subs. 1, C. are made to relate to the land conveyed "subject as and in the manner in which it is expressed to be conveyed." In the case given above they will therefore be taken as subject to the prior mortgage,

in the same way as the covenants would have been made subject to it if they had been expressed.

(m) This section takes away the right of a mortgagee to consolidate his mortgages unless otherwise expressed, see p. 267.

his own name with the _____ Assurance Society dated &c. and numbered _____ for the sum of £_____ under the annual premium of £_____, AND WHEREAS the said A. has applied to the said M. to lend him the sum of £_____ which the said M. has agreed to do upon having the repayment thereof with interest at the rate of £_____ per cent. per annum secured in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £_____ now paid by the said M. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby grant (n) unto the said M. his executors administrators and assigns ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said M. his executors administrators and assigns during the life of the said A., SUBJECT nevertheless to the proviso for redemption hereinafter contained. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid He the said A. as beneficial owner doth hereby assign unto the said M. his executors administrators and assigns ALL that the aforesaid policy of assurance and the moneys assured by or to become payable thereunder, with full power to give effectual receipts and discharges for the same (o), TO HAVE AND TO HOLD the policy moneys and premises hereby assigned UNTO the said M. his executors administrators and assigns, SUBJECT nevertheless to the proviso for redemption hereinafter con-

Agreement for loan.

Grant of freeholds.

Assignment of policy.

(n) A mortgage of a life estate used to be made by demise in order not to affect the powers of the tenant for life to lease, to consent to a sale, &c.; and a declaration to that effect was sometimes added. In view however of s. 50 of the Settled Land Act, 1882, there seems no reason why the mortgage should not in future be made by a grant of

the life estate, see p. 366.

(o) It is more usual to effect the policy in the name of the mortgagor, and then to assign it, than to effect it in the name of the mortgagee. It is not necessary to add a power of attorney, but written notice of the assignment must be given to the Office. See 30 & 31 Vict. c. 144.

Proviso
for re-
demption.

tained. PROVIDED ALWAYS and it is hereby agreed and declared that if the said A. his executors administrators or assigns shall on the ——— day of ——— (*six months after the date of the mortgage*) pay to the said M. his executors administrators or assigns the sum of £—— with interest for the same at the rate of £—— per cent. per annum from the date of these presents then the said M. his executors administrators or assigns shall at any time thereafter upon the request and at the cost of the said A. his executors administrators or assigns reconvey and assign the said hereditaments policy and premises hereby mortgaged unto the said A. his executors administrators or assigns or as he or they shall direct. (*Covenant by A. for*

Applica-
tion of
policy
moneys.

payment of principal and interest, see p. 82). AND IT IS HEREBY AGREED AND DECLARED that if the said M. his executors administrators or assigns shall receive any moneys under the said policy such moneys shall after payment thereof of all costs and expenses incurred in recovering the same or otherwise in the execution of any of the powers of these presents be applied in or towards payment and satisfaction of all moneys for the time being owing on the security of these presents and the residue if any shall be paid to the said A. his executors administrators or assigns. AND IT IS HEREBY ALSO AGREED AND

Receipts of
mortgagee.

DECLARED that the receipts in writing of the said M. his executors administrators and assigns shall be good and sufficient discharges for all moneys thereby acknowledged to be received in respect of the said policy, and shall exonerate the Assurance Office and all other persons paying the same from seeing to the application thereof, and from inquiring whether any default has been made in payment of any principal money or interest or whether any money remains owing on the security of these presents.

Covenants
by mort-
gagor to
keep up
policy.

AND he the said A. doth hereby covenant with the said M. that he the said A. will not do any act or commit any default whereby the said policy may be rendered void or voidable or the said M. his executors administrators or assigns may be prevented from receiving the moneys to

become payable thereunder or any part thereof: And that if the said policy or any policy or policies to be effected as hereinafter provided shall by any means become void the said A. will immediately at his own cost effect a new policy or policies in lieu thereof in the name or names of the said M. his executors administrators or assigns with the said

———— Assurance Office or some other office or

offices to be approved by the said M. his executors administrators or assigns in a sum or sums equal to the sum or sums assured by the policy or policies which shall have become void as aforesaid: And that he the said A. will from time to time during the continuance of this security punctually pay all premiums and other sums of money for keeping on foot the said policy hereby assigned or any other policy or policies to be effected as aforesaid, and will immediately after every such payment deliver the receipt for the same to the said M. his executors administrators or assigns: And that in case any default

shall be made by the said A. in keeping on foot any policy or in delivering any receipt as aforesaid then it shall be lawful for the said M. his executors administrators and assigns to pay any premiums or sums of money and to do all things necessary for keeping on foot the said policy or for effecting and keeping on foot any such new policy or policies as aforesaid as he or they shall think fit: And that in such case he the said A. his executors or administrators will on demand repay to the said M. his executors administrators or assigns all such sums so paid by him or them with interest for the same at the rate aforesaid from the respective times of paying the same. AND IT IS

HEREBY AGREED AND DECLARED that such sums of money and interest shall in the meantime be charged upon the said hereditaments and premises and the policy or policies for the time being subject to these presents, And that every such new policy and the moneys to become payable thereunder shall be subject to the proviso for redemption hereinbefore contained and to the powers and trusts hereby declared concerning the said policy hereby assigned and

Mortgagee
may keep
up policy.

Mortgage by Tenant for Life,

the moneys to become payable thereunder. (*Power of sale if desired of hereditaments policy and premises hereby mortgaged, as in mortgage of freeholds, see p. 78, mutatis mutandis*). IN WITNESS &c.

LII.

MORTGAGE of FREEHOLDS COPYHOLDS and LEASEHOLDS comprised in a settlement by TENANT for LIFE under the SETTLED LAND ACT, 1882, for the purpose of receiving money for enfranchisement equality of exchange or partition (p).

Settle-
ment
under
which
mortgagor
is tenant
for life.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*tenant for life*) of the 1st part B. of &c.
C. of &c. and D. of &c. (*trustees of the settlement under
which A. is tenant for life*) of the 2nd part and M. of &c.
(*mortgagee*) of the 3rd part, WHEREAS by an Indenture of
Settlement dated &c. and made between &c. being the
settlement executed previous to the marriage shortly after-
wards solemnized between the said A. and W. his wife
certain freehold hereditaments situate in the county of
———— were limited and assured after the solemniza-
tion of the said then intended marriage to the use
of the said A. and his assigns during his life without
impeachment of waste with divers remainders over, and
by the same Indenture certain copyhold hereditaments
situate in the same county were covenanted to be sur-
rendered to the use of the said B. C. and D. their heirs
and assigns [to which they were subsequently admitted]
and certain leasehold hereditaments situate in the same
county were assigned unto the said B. C. and D. their
executors administrators and assigns to hold the said
copyhold and leasehold hereditaments Upon such trusts

powers and provisions as should best or nearest correspond with the uses trusts powers and provisions therein before declared and contained of and concerning the aforesaid freehold hereditaments and in manner therein mentioned, and the said B. C. and D. were appointed to be trustees of the said settlement for the purposes of the Settled Land Act, 1882, and for all other purposes (g) AND WHEREAS since the date of the said Indenture of Settlement certain portions of the hereditaments comprised therein have been sold and with the proceeds thereof and with other moneys other hereditaments have been bought and by Indentures dated &c. &c. respectively have been settled to the uses and upon the trusts of the said Indenture of Settlement of the ——— day of ———, AND WHEREAS all or some of the hereditaments now subject to the uses and trusts of the same Indenture of Settlement are subject to certain yearly rentcharges amounting altogether to the yearly sum of £—— or thereabouts of which some are perpetual and others will terminate with lives or years and also to certain incumbrances amounting altogether to the sum of £—— or thereabouts, which charges and incumbrances are specified in the second schedule hereto, AND WHEREAS the sum of £—— is required for &c. (*state whether it is required for enfranchisement or equality of exchange or partition*), AND WHEREAS the said A. as tenant for life in possession of the same hereditaments has applied to the said M. to advance the said sum of £—— for the purpose aforesaid which the said M. has consented to do on having the repayment thereof with interest at the rate of £4 per cent. per annum secured in manner hereinafter appearing, AND WHEREAS it has been agreed that the said sum of £—— shall be paid to the said B. C. and D. as such trustees as aforesaid upon their joining in these presents in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said

Subsequent dealings with the property comprised in the settlement.

Incumbrances already existing.

Money required for enfranchisement &c.

Agreement for loan.

Money to be paid to the trustees.

(g) Or it should be shown that the trustees have a power of sale, as in Prec. XXI., p. 33, see Settled Land Act, 1882, s. 2, subs. 8, p. 329.

Mortgage by Tenant for Life.

Convey-
ance of
freeholds
copyholds
and lease-
holds.

Proviso
for re-
demption.

agreement and in consideration of the sum of £——— now paid by the said M. to the said B. C. and D., The receipt whereof the said B. C. and D. do hereby acknowledge, He the said A. as beneficial owner in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby convey (r) unto the said M. his heirs executors administrators and assigns respectively **ALL AND SINGULAR** the freehold copyhold and leasehold messuages lands and hereditaments comprised in the first schedule hereto and therein more particularly described being part of the hereditaments now subject to the uses and trusts of the hereinbefore recited Indenture of Settlement of the —— day of ——, **TO HAVE AND TO HOLD** the hereditaments and premises hereby conveyed **As to such parts thereof as are of the nature of freehold UNTO AND TO THE USE** of the said M. his heirs and assigns, **As to such parts thereof as are of the nature of copyhold UNTO AND TO THE USE** of the said M. his heirs and assigns to be holden at the will of the lord according to the custom of the manor or manors whereof the same parts respectively are holden and by and under the rents fines suits and services therefor respectively due and of right accustomed, And as to such parts thereof as are of the nature of leasehold **UNTO** the said M. his executors administrators and assigns for all the residues of the terms for which the same respectively are held except the last three days of each term, **SUBJECT** nevertheless as to all the freehold copyhold and leasehold hereditaments hereby conveyed to the yearly rentcharges and other incumbrances to which the same or parts thereof are now subject, **PROVIDED ALWAYS** and it is hereby agreed and declared that if the said A. or any other person or persons interested in remainder after the life estate of the said A. under the limitations of the aforesaid Indenture of Settlement or otherwise in the hereditaments hereby conveyed

(r) See note to Settled Land Act, 1882, s. 20, p. 342.

or the trustees or trustee thereof for the time being shall on the ——— day of ——— (*six months after the date of the mortgage*) pay to the said M. or the persons claiming under him the sum of £—— with interest for the same at the rate of £4 per cent. per annum from the date of these presents then the said M. or the persons claiming under him shall at any time thereafter upon the request and at the cost of the persons requiring the same reconvey the hereditaments and premises hereby conveyed to the uses and upon the trusts respectively declared by the aforesaid Indenture of Settlement of and concerning the freehold copyhold and leasehold hereditaments thereby settled or such of the same uses and trusts as shall be then subsisting or in such manner as the said A. or the persons requiring such reconveyance shall direct. AND the said A. doth hereby covenant with the said M. that he the said A. will at all times during his life if the aforesaid sum of £—— or any part thereof shall so long remain owing pay to the said M. or the persons claiming under him interest for the same sum or such part thereof as shall remain owing at the rate of £4 per cent. per annum on the ——— day of ——— and the ——— day of ——— in every year. (*Covenants by B. C. and D. against incumbrances, see p. 35. Proviso limiting A.'s implied covenants for title, see p. 35, and if M. is not to have the title deeds acknowledgment by A. of M.'s right to their production and to delivery of copies thereof and undertaking for safe custody, see p. 35*). IN WITNESS &c.

Covenant
by tenant
for life to
pay in-
terest.

The first schedule to the above-written Indenture.
(*Description of parcels.*)

The second schedule to the above-written Indenture.
(*List of incumbrances.*)

LIII.

RECONVEYANCE of FREEHOLDS COPYHOLDS and LEASEHOLDS by EXECUTORS of the MORTGAGEE to the USES of the SETTLEMENT by supplemental DEED.

THIS INDENTURE made the ——— day of ——— Between Y. of &c. and Z. of &c. (*executors of mortgagee*) of the one part, and B. of &c. and C. of &c. (*trustees of settlement*) of the other part being supplemental to an Indenture of Mortgage dated &c. and made between A. of the 1st part the said B. and C. and D. of the 2nd part and M. of the 3rd part for securing to the said M. the sum of £—— together with interest at the rate of £4 per cent. per annum on the security of the freehold copyhold and leasehold hereditaments comprised in the said Indenture of Mortgage being part of the hereditaments comprised in an Indenture of Settlement dated &c. under which the said A. was then tenant for life in possession, **WHEREAS** the said M. was never admitted tenant to the copyhold hereditaments comprised in the aforesaid Indenture of Mortgage, **AND WHEREAS** the said M. duly made and executed his last will dated &c. and thereby appointed the said Y. and Z. executors thereof, **AND WHEREAS** the said M. died on the ——— day of ——— without having revoked or altered his said will, which was on the ——— day of ——— duly proved in the ——— Registry of the Probate Division of the High Court of Justice by the said Y. and Z., **AND WHEREAS** the said principal sum of £—— is still owing on the aforesaid security but all interest thereon has been paid up to the date hereof, **AND WHEREAS** the said A. died on the ——— day of ——— and thereupon his eldest son H. became tenant in tail male in possession of the freehold copyhold and leasehold hereditaments subject to the trusts of the aforesaid Indenture of Settlement, **AND WHEREAS** the said H. is an infant of the age of ——— years or thereabouts, **AND WHEREAS** the said D. died on the ——— day of ——— leaving the said B. and C. his co-trustees him surviving,

Will of the mortgagee.

Amount owing on mortgage.

Death of tenant for life.

Infancy of tenant in tail.

Death of a trustee.

AND WHEREAS the said B. and C. are desirous of paying off the said sum of £—— out of capital moneys (s) belonging to them as trustees of the aforesaid Indenture of Settlement and of having the said freehold copyhold and leasehold hereditaments comprised in the aforesaid Indenture of Mortgage reconveyed in manner hereinafter appearing, Intention of trustees to pay off mortgage.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— now paid by the said B. and C. out of capital moneys belonging to them as such trustees as aforesaid to the said Y. and Z., The receipt whereof the said Y. and Z. do hereby acknowledge, They the said Y. and Z. as personal representatives of the said M. deceased (t) and in exercise of the power for this purpose given to them by the Conveyancing and Law of Property Act, 1881 (u), and of all other powers if any enabling them in this behalf do and each of them doth hereby convey unto the said B. and C. their heirs executors administrators and assigns respectively, ALL AND SINGULAR the freehold copyhold and leasehold hereditaments and premises comprised in the aforesaid Indenture of Mortgage, Reconveyance of mortgaged property.

TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed UNTO the said B. and C. their heirs executors administrators and assigns respectively TO THE USES upon the trusts and with and subject to the powers provisions and agreements respectively declared and contained by the aforesaid Indenture of Settlement of and concerning the freehold copyhold and leasehold hereditaments thereby settled or such of the same uses trusts powers provisions and agreements as may be still subsisting or capable of taking effect, FREED AND DISCHARGED from the said principal sum of £—— and all moneys and interest secured by and all claims and demands under the aforesaid Indenture of Mortgage. To the uses &c. of the settlement. IN WITNESS &c.

(s) See Settled Land Act, 1882, s. 7, subs. 1, F, p. 256.
 n. 21, ii., p. 346. (u) See same Act, s. 30, p. 280.
 (t) See Conveyancing Act, 1881,

LIV.

TRANSFER of INCUMBRANCE by TENANT FOR LIFE *with consent of incumbrancers under the Settled Land Act, 1882 (x).*

Recital of
settlement
charging
portions.

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*tenant for life*) of the 1st part K. of &c. and L. of &c. (*the sister and brother of A. entitled to portions*) of the 2nd part and B. of &c. and C. of &c. (*trustees of portions*) of the 3rd part being supplemental to an Indenture of Settlement dated &c. and made &c. being the settlement made previous to the marriage shortly afterwards solemnized between the said (*father*) and (*mother*) of the parties hereto of the first two parts, WHEREAS by the above-mentioned Indenture of Settlement the hereditaments comprised therein were limited to the use of the said (*father*) during his life with remainder to the use that the said (*mother*) should after the decease of the said (*father*) receive the yearly rentcharge therein mentioned, And subject thereto to the use of (*the trustees*) their executors administrators and assigns for the term of 1000 years upon the trusts therein mentioned for raising the sum of £10,000 as the portions of the younger children of the said (*father*), And subject as aforesaid to the use of the first and other sons of the said (*father*) in tail male, with divers remainders over, AND WHEREAS &c. (*recite death of father and mother, that A. is their eldest son and attained twenty-one and that K. and L. are their younger daughter and son and entitled to the portions equally of which B. and C. are the present trustees, and recite settlement made on A.'s marriage under which he is tenant for life, see p. 44*), AND WHEREAS the said A. as tenant for life under the said Indenture of Settlement of the ——— day of ——— agreed with P. for the exchange of a certain farm and hereditaments known as Blackacre Farm being portion of the hereditaments comprised in the said Indenture of

Agreement for
exchange
by present
tenant for
life.

(x) This transfer is made under See note thereto, p. 333.
s. 5 of the Settled Land Act, 1882.

Settlement of the ——— day of ——— (*the settlement made on the marriage of the father and mother*) for a certain farm and hereditaments known as Whiteacre Farm, AND WHEREAS the said sum of £10,000 is still owing to the said K. and L. in equal shares as aforesaid, AND WHEREAS the said K. and L. and also the said B. and C. at the request of the said A. consented to join in an Indenture dated &c. and made between &c., by which the said Blackacre Farm was conveyed to the said P. released from the said sum of £10,000 and the said term of 1000 years and the trusts thereof, AND WHEREAS by an Indenture dated &c. and made &c. the said Whiteacre Farm and hereditaments therein mentioned were conveyed by the said P. to the uses of the said Indenture of Settlement of the ——— day of ——— under which the said A. is tenant for life as aforesaid, AND WHEREAS in consideration of the said K. and L. and their trustees the said B. and C. joining in the said Indenture of the ——— day of ——— in manner aforesaid, it was agreed that the said A. should charge the said Whiteacre Farm and hereditaments received in exchange for the said Blackacre Farm and hereditaments with the said sum of £10,000 in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises, He the said A. in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power enabling him in this behalf doth hereby with the consent of the said K. and L. and of their trustees the said B. and C. charge ALL AND SINGULAR the farm and hereditaments known as Whiteacre Farm comprised in the said Indenture of the ——— day of ——— with the sum of £10,000 for the portions of the said K. and L. under the said Indenture of Settlement of the ——— day of ——— (*the settlement made on the marriage of the father and mother*) in exoneration of the farm and hereditaments known as Blackacre Farm comprised in the said Indenture of the ——— day of ———, AND THIS INDEN-

Portions still owing.

Deeds effecting exchange.

Agreement to charge with portions the hereditaments received in exchange.

Charge of hereditaments with portions.

Transfer of Mortgage of Freeholds.

Creation
of term to
secure
portions.

TURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the premises, He the said A. in exercise of the same powers and with the same consents as aforesaid doth hereby demise unto the said B. and C. their executors administrators and assigns, ALL THAT the said Whiteacre Farm and hereditaments hereby charged, To HAVE AND TO HOLD the hereditaments and premises hereby demised UNTO the said B. and C. their executors administrators and assigns for the term of 1000 years from the ——— day of ——— (*the day of the commencement of the original term*), UPON THE TRUSTS and with and subject to the powers and provisions declared and contained in the said Indenture of Settlement of the ——— day of ——— (*the settlement made on the marriage of the father and mother*) of and concerning the said term of 1000 years thereby granted for the purpose of securing and raising the said sum of £10,000 for portions as therein mentioned. IN WITNESS &c.

 LV.

TRANSFER of MORTGAGE of FREEHOLDS *the Mortgagor not being a party.*

Recital of
mortgage.

THIS INDENTURE made the ——— day of ——— Between M. of &c. (*mortgagee*) of the one part and T. of &c. (*transferee*) of the other part, WHEREAS by an Indenture dated &c. and made between A. of the one part and the said M. of the other part the said A. granted unto and to the use of the said M. his heirs and assigns the freehold messuages and hereditaments therein described with the appurtenances by way of mortgage for securing the repayment of the sum of £1000 together with interest thereon at the rate of £5 per cent. per annum as therein mentioned, AND WHEREAS the said principal sum of £1000 together with the sum of £12 10s. for interest thereon making together the sum of £1012 10s. is now owing to the said M. on the security of the aforesaid

Amount
owing.

Indenture, AND WHEREAS the said T. has agreed to pay Agreement for transfer. to the said M. the said sum of £1012 10s. upon having a transfer of the said mortgage in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement. and in consideration of the sum of £1012 10s. now paid by the said T. to the said M., The receipt whereof the said M. doth hereby acknowledge, He the said M. as mortgagee doth hereby assign unto the said T. his executors administrators and assigns ALL that the aforesaid sum of £1000 now owing Assignment of debt. to him on the security aforesaid and also the interest now due as aforesaid and hereafter to become due for the same and the benefit of the power of sale and of all other powers and provisions in the said Indenture of the ——— day of ——— contained for securing payment of the said principal sum and interest (y), To HAVE AND TO HOLD the said sum of £1000 and interest and premises hereby assigned unto the said T. his executors administrators and assigns absolutely. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid He the said Grant of freeholds. M. as mortgagee doth hereby grant unto the said T. and his heirs ALL AND SINGULAR the messuages and hereditaments comprised in the said Indenture of the ——— day of ——— and thereby granted by way of mortgage, To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said T. his heirs and assigns, subject to the right or equity of redemption if any now subsisting under the said Indenture of the ——— day of ———. IN WITNESS &c.

(y) Notice in writing of this assignment should be given to the mortgagor. A power of attorney to sue in the name of the transferor

is by s. 25, subs. 6 of the Judicature Act, 1873, rendered unnecessary, where such notice is given.

LVI.

TRANSFER of MORTGAGE of FREEHOLDS, the Mortgagor receiving a further advance (z).Amount
owing.Agree-
ment for
further
loan.Assign-
ment of
debt.

THIS INDENTURE made the ——— day of ———
Between M. of &c. (*mortgagee*) of the 1st part A. of &c. (*mortgagor*) of the 2nd part and T. of &c. (*transferee*) of the 3rd part, WHEREAS &c. (*recite mortgage for £1000 by A. to M. see p. 91*), AND WHEREAS the said principal sum of £1000 is still owing to the said M. on the security of the aforesaid Indenture but all interest thereon has been paid up to the date hereof, AND WHEREAS the said A. has requested the said T. to pay to the said M. the said sum of £1000 and also to lend to him the said A. the further sum of £500 which the said T. has agreed to do upon having the repayment of the said two several sums of £1000 and £500 together with interest at the rate of £5 per cent. per annum secured in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £1000 now paid by the said T. to the said M., The receipt whereof the said M. doth hereby acknowledge, He the said M. as mortgagee doth hereby assign unto the said T. his executors administrators and assigns ALL &c. (*mortgage debt (a) as in last precedent, see p. 105*). AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid and also in consideration of the sum of £500 now paid by the said T. to the said A., The receipt &c., He the said M. as mortgagee at the request and by the direction of the said A. as beneficial owner (*b*) doth

(z) See Conveyancing Act, 1881, s. 15, and Conveyancing Act, 1882, s. 12, as to right of mortgagor to require transfer to third person instead of reconveyance from the mortgagee, pp. 266, 325.

(a) On the transfer of a legal mortgage, where the mortgagor is a

party, it is not necessary to assign the debt, see *Phillips v. Gutteridge*, 4 De G. & J. 531. It is however usually done, to avoid all possible questions as to priority.

(b) See Conveyancing Act, 1881, s. 7, subs. 2, p. 257.

hereby grant, And he the said A. as beneficial owner doth hereby grant and confirm unto the said T. and his heirs ALL AND SINGULAR the messuages and hereditaments comprised in the aforesaid Indenture of the ——— day of ——— and thereby granted by way of mortgage, To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said T. his heirs and assigns, FREED and discharged from all equity of redemption under the said Indenture of the ——— day of ———, SUBJECT nevertheless to the proviso for redemption next hereinafter contained. (*Proviso for redemption on payment of £1500, see p. 81. Covenant by A. for payment of principal and interest, see p. 82. If the original mortgage contains a power of sale such power can be conferred upon the transferee by providing as follows: "AND IT IS HEREBY AGREED AND DECLARED* ^{Grant of premises.} ^{Fresh proviso for redemption.} ^{Power of sale &c.} that the power of sale and other powers and provisions for securing payment of the principal money and interest contained in the aforesaid Indenture of the ——— day of ——— shall remain in full force and may be exercised by the said T. his executors administrators and assigns for the purpose of securing and raising the said sum of £1500 or other sum for the time being owing on the security of these presents and the interest thereon"). IN WITNESS &c.

LVII.

TRANSFER of MORTGAGE of COPYHOLDS by supplemental deed.

THIS INDENTURE made the ——— day of ——— Between M. of &c. (*mortgagee*) of the 1st part A. of &c. (*mortgagor*) (c) of the 2nd part and T. of &c. (*transferee*)

(c) It is better to get the mortgagor to join if possible. If this cannot conveniently be done, the second testatum to the end of the precedent must be omitted, and in-

stead thereof the mortgagee will covenant with the transferee to procure admittance and to surrender to him.

Transfer of Mortgage of Copyholds.

Recital
of condi-
tional sur-
render.

Mortgagee
not ad-
mitted.
Amount
owing on
mortgage.

Agree-
ment for
transfer.

Assign-
ment of
debt.

Covenant
by mort-
gagor for
condi-
tional sur-
render.

of the 3rd part, being supplemental to an Indenture of Mortgage dated &c. and made between the said A. of the one part and the said M. of the other part for securing to the said M. the sum of £1000 together with interest at the rate of £5 per cent. per annum on the security of the copyhold hereditaments therein mentioned, WHEREAS pursuant to the covenant in that behalf contained in the aforesaid Indenture of Mortgage the said A. did on the ——— day of ——— out of court surrender into the hands of the lord of the manor of ——— the copyhold hereditaments comprised in the aforesaid Indenture of Mortgage to the use of the said M. his heirs and assigns subject to a condition for making void the said surrender on payment by the said A. his heirs executors administrators or assigns unto the said M. his executors administrators or assigns of the sum of £1000 with interest at the rate aforesaid on the ——— day of ———, AND WHEREAS the said M. has not been admitted tenant to the said copyhold hereditaments pursuant to the said surrender, AND WHEREAS the said principal sum of £1000 together with the sum of £12 10s. for interest thereon making together the sum of £1012 10s. is now owing to the said M. on the security of the aforesaid Indenture of Mortgage, AND WHEREAS the said T. has agreed to pay to the said M. the said sum of £1012 10s. upon having a transfer of the said mortgage in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £1012 10s. now paid by the said T. to the said M., The receipt whereof the said M. doth hereby acknowledge, He the said M. as mortgagee doth hereby assign &c. (*assignment of debt, see p. 105*). AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the premises the said A. doth hereby covenant with the said T. that he the said A. will forthwith surrender &c. (*covenant for conditional surrender of "ALL AND SINGULAR the copyhold hereditaments comprised in*

the aforesaid Indenture of Mortgage," see p. 85). [AND ^{Provision as to power of sale &c.} IT IS HEREBY AGREED AND DECLARED that the power of sale and other powers and provisions for securing payment of the said sum of £1000 contained in the aforesaid Indenture of Mortgage shall remain in full force and may be exercised by the said T. his executors administrators and assigns for the purpose of securing and raising the said sum of £1000 or other sum for the time being owing on the security of these presents and the interest thereon (d)]. AND IT IS HEREBY AGREED that satisfaction of the said ^{Warrant of satisfaction by original mortgagee.} conditional surrender of the ——— day of ——— shall be entered on the rolls of the said manor at the cost of the said A. IN WITNESS &c.

LVIII.

TRANSFER of MORTGAGE of LEASEHOLDS by SUPPLEMENTAL DEED.

THIS INDENTURE made the ——— day of ——— Between M. of &c. (*mortgagee*) of the one part and T. of &c. (*transferee*) of the other part, being supplemental to an Indenture of Mortgage dated &c. and made between A. of the one part and the said M. of the other part for securing to the said M. the sum of £1000 together with interest at the rate of £—— per cent. per annum on the security of the leasehold hereditaments therein mentioned, WHEREAS &c. (*recite amount now owing and agreement for transfer of mortgage, see p. 108*), NOW THIS INDENTURE WITNESSETH that &c. (*assignment of debt, see p. 105*). AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid the said M. ^{Assignment of lease.} as mortgagee doth hereby assign unto the said T. his executors administrators and assigns ALL AND SINGULAR holds.

(d) This may be inserted if the power of sale. original mortgage deed contained a

the leasehold hereditaments and premises comprised in the aforesaid Indenture of Mortgage, TO HAVE AND TO HOLD the hereditaments and premises hereby assigned UNTO the said T. his executors administrators and assigns subject to the right or equity of redemption if any now subsisting under the aforesaid Indenture of Mortgage. IN WITNESS &c.

LIX.

CONVEYANCE of FREEHOLDS *subject to a Mortgage.*

Recital of
mortgage.

Amount
owing.

Contract
for sale
subject to
mortgage.

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*vendor*) of the one part and P. of &c. (*purchaser*) of the other part, WHEREAS by an Indenture dated &c. and made between the said A. of the one part and M. of the other part the hereditaments hereinafter described and intended to be hereby granted were granted by the said A. unto and to the use of the said M. his heirs and assigns subject to the proviso therein contained for the redemption of the same hereditaments on payment by the said A. his heirs executors administrators or assigns to the said M. his executors administrators or assigns of the sum of £1000 on the ——— day of ——— with interest at the rate of £5 per cent. per annum on the days and in manner therein mentioned, AND WHEREAS the said principal sum of £1000 together with interest thereon from the ——— day of ——— is now owing to the said M. on the security of the aforesaid Indenture of Mortgage, AND WHEREAS the said A. has agreed with the said P. for the sale to him of the said hereditaments in fee simple in possession subject to the aforesaid Indenture of Mortgage and to the payment of all principal money and interest thereby secured but free from all other incumbrances for the sum of £500, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £500 now paid by the said P. to the said A., The receipt whereof the said A. doth hereby

acknowledge, He the said A. as beneficial owner (e) doth hereby grant unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns, SUBJECT to the aforesaid Indenture of Mortgage and to all principal money and interest thereby secured. AND the said P. doth hereby covenant with the said A. that he the said P. his heirs executors administrators and assigns will duly pay all principal money and interest for the time being owing on the security of the aforesaid Indenture of Mortgage, and will indemnify the said A. his heirs executors and administrators against payment of all such principal money and interest and against all actions claims and demands in respect of the same or any part thereof. IN WITNESS &c.

Covenant
by pur-
chaser to
pay mort-
gage debt.

LX.

CONVEYANCE of FREEHOLDS by MORTGAGOR and MORTGAGEE. *Provision for keeping debt on foot for protection of purchaser.*

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*mortgagor*) (f) of the first part M. of &c. (*mortgagee*) of the second part and P. of &c. (*purchaser*) of the third part, WHEREAS &c. (*recite mortgage to M. see p. 110*), AND WHEREAS the said principal sum of £1000 together with the sum of £25 for interest thereon making together the sum of £1025 is now owing to the said M. on the security of the aforesaid Indenture, AND WHEREAS the said A. has agreed with the said P. for the sale to him of the said hereditaments in fee simple in possession free from incumbrances for the sum of £2000, out of which it has been agreed that the said sum of Mortgagee

Amount
owing.

Contract
for sale.

(e) The covenants for title by these words implied will be subject to the Indenture of Mortgage, see Conveyancing Act, 1881, s. 7, subs.

1, A, p. 251.

(f) The mortgagee as having the legal estate is sometimes made the party of the first part.

to be paid
off.

£1025 shall be paid by the said P. to the said M. in discharge of his said security upon his joining in these presents in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £1025 now paid by the said P. to the said M., The receipt of which said sum of £1025 the said M. doth hereby acknowledge, and in consideration of the sum of £975 now paid by the said P. to the said A., The payment and receipt respectively of which said several sums of £1025 and £975 in manner aforesaid the said A. doth hereby acknowledge, He the said M. as mortgagee by the direction of the said A. as beneficial owner doth hereby grant and release, and He the said A. as beneficial owner doth hereby grant and confirm unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns, FREED and discharged from the said principal sum of £1000 and all interest for the same and all moneys secured by and all claims and demands under the hereinbefore recited Indenture of the ——— day of ———. PROVIDED ALWAYS (*g*) and it is hereby declared that anything hereinbefore contained to the contrary notwithstanding the said mortgage created by the said Indenture of the ——— day of ——— and the said sum of £1000 owing on the security thereof and

Declaration for keeping mortgage debt on foot for protection of purchaser.

(*g*) This declaration should be inserted where it is thought desirable to keep the mortgage debt on foot for the protection of the purchaser, and it is sufficient for that purpose, see *Jameson v. Stein*, 21 Beav. 13. Another way is to assign the debt to a trustee "UPON TRUST to assign and dispose of the same as the said P. his heirs and assigns shall direct, and in the meantime to permit and suffer the same to wait upon and attend the freehold and inheritance of the hereditaments in-

tended to be hereby granted and to protect the same from all mesne incumbrances if any;" and then to convey the parcels to the use of the trustee his heirs and assigns "UPON TRUST for better securing to the said trustee his executors administrators and assigns the said principal money interest and premises hereby assigned, And subject thereto IN TRUST for the said P. his heirs and assigns and to be conveyed and disposed of as the said P. his heirs and assigns shall direct."

all interest now due or to become due for the same shall be deemed and taken to be subsisting and in full force and effect as charges for the benefit of the said P. his heirs and assigns and for the purpose of protecting him and them from and against all mesne incumbrances and estates if any. IN WITNESS &c.

LXI.

CONVEYANCE of FREEHOLDS by MORTGAGOR and MORTGAGEE for a term of years to a purchaser, the mortgagee being satisfied with his other securities.

THIS INDENTURE made the —— day of —— Between A. of &c. (*mortgagor*) of the 1st part M. of &c. (*mortgagee*) of the 2nd part and P. of &c. (*purchaser*) of the 3rd part, WHEREAS &c. (*recite the settlement, disentailing deed and other deeds and documents under which A. is now absolute owner, subject to a mortgage by the trustees of portions by demise for 1000 years of the hereditaments intended to be hereby granted together with other hereditaments to M. to secure £10,000 and interest*), AND WHEREAS the said principal sum of £10,000 together with interest thereon from the —— day of —— is now owing to the said M. on the security of the aforesaid Indenture of the —— day of ——, AND WHEREAS &c. (*recite contract for sale by A. to P. for £500, see p. 13*), AND WHEREAS the said M. being satisfied with the security of the other hereditaments comprised in the said Indenture of the —— day of —— has consented to join in these presents for the purpose of releasing the hereditaments intended to be hereby granted in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £500 now paid by the said P. to the said A., The receipt whereof the said A. doth hereby acknowledge, He the said A. as beneficial owner doth hereby grant, And He the said M. as mortgagee by the direction of the said A. as

Recital of title of mortgagor and mortgagee.

Amount owing.

Contract for sale.

Mortgagee satisfied with other security.

and sur-
render of
parcels.

beneficial owner, and to the intent that the residue of the said term of 1000 years may merge and be extinguished in the reversion and inheritance of the hereditaments intended to be hereby granted doth hereby assign and surrender unto the said P. and his heirs ALL &c. (*parcels*) TO HAVE AND TO HOLD the hereditaments and premises hereby granted and surrendered UNTO AND TO THE USE of the said P. his heirs and assigns, FREED AND DISCHARGED from the said principal sum of £10,000 and all interest for the same and all moneys secured by and all claims and demands under the aforesaid Indenture of the ——— day of ———. (*Provision as to deeds, see p. 41*). IN WITNESS &c.

LXII.

CONVEYANCE of FREEHOLDS by MORTGAGEE *alone under a power of sale, whether conferred by the mortgage deed or by the Conveyancing Act, 1881.*

Recital of
mortgage.

Contract
for sale by
mortgagee.

THIS INDENTURE made the ——— day of ——— Between M. of &c. (*mortgagee*) of the one part and P. of &c. (*purchaser*) of the other part, WHEREAS &c. (*recite mortgage by A. to M. p. 110, continuing, if the sale is made under the power given by the deed, "And the said Indenture contained a power" &c., setting out from the mortgage the power of sale and of giving receipts, and the clauses if any protecting the purchaser*), AND WHEREAS the said M. has [in exercise of the aforesaid power of sale] agreed with the said P. for the sale to him of the aforesaid hereditaments in fee simple in possession free from incumbrances for the sum of £——, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said P. to the said M., The receipt whereof the said M. doth hereby acknowledge, He the said M. as mortgagee [in exercise of the power of sale conferred by the Conveyancing and Law of Property Act, 1881 (*h*)] doth

(*h*) Where the mortgagee is selling under the Act these words should be inserted for the protection of the purchaser, see s. 21, subs. 2, p. 272.

hereby grant and convey unto the said P. and his heirs ALL &c. (*parcels*), TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said P. his heirs and assigns for ever, Freed and discharged from the aforesaid Indenture of Mortgage of the ——— day of ——— and from all principal money and interest thereby secured and from all equity of redemption and all claims and demands whatsoever under the same Indenture. IN WITNESS &c.

LXIII.

MEMORANDUM of DEPOSIT of *Deeds to secure a sum now owing and future advances.*

MEMORANDUM OF AGREEMENT made this ——— day of ——— Between A. of &c. (*mortgagor*) of the one part and M. of &c. (*mortgagee*) of the other part, WHEREBY IT IS AGREED between the parties hereto that the deeds evidences and writings comprised in the schedule hereto, which have this day been deposited by the said A. with the said M., as the said M. doth hereby acknowledge, shall be held and retained by the said M. as an equitable security for the payment to him his executors or administrators of the sum of £—— now owing by the said A. to the said M., as the said A. doth hereby acknowledge, and of all further sums if any which may be lent and advanced by the said M. to the said A., with interest in the meantime on the said sum of £—— and all such further sums if any at the rate of £5 per cent. per annum. AND the said A. doth hereby charge all and singular the hereditaments comprised in the said deeds evidences and writings respectively with the payment to the said A. his executors and administrators of the said sum of £—— and of all such further sums as aforesaid if any with interest thereon at the rate aforesaid. And the said A. doth hereby undertake at any time or times during the continuance of this security at his own cost to make and

execute to the said M. his heirs and assigns such legal mortgage or mortgages of the aforesaid hereditaments with such power of sale and other powers and provisions and in such manner as shall be reasonably required for further securing the payment of the said sum of £—— and all other sums of money which may for the time being be owing on the security of this agreement with interest thereon at the rate aforesaid. IN WITNESS &c.

The schedule to the above-written agreement.

(*List of Deeds.*)

LXIV.

MEMORANDUM of DEPOSIT of *Title Deeds by one of the partners of a firm of traders with their Bankers to secure ACCOUNT CURRENT of the firm.*

I A. of &c. (*mortgagor*) do hereby acknowledge that the deeds evidences and writings comprised in the schedule hereto have been this day deposited by me with the ——— Joint Stock Banking Company Limited, at their bank at No. ——— in ——— Street &c., by way of equitable mortgage for securing payment to the said Banking Company of all moneys (i) [not exceeding £——] which at the time of the said Banking Company enforcing this security may be owing to the said Banking

(i) This security is framed to meet the rule in *Clayton's Case*, 1 Mer. 608, under which payments from time to time by the firm to their account at the bank would be appropriated to answer the first items on the debit side; so that the security being limited in amount either expressly or by being stamped to cover a certain amount, such payments might wipe out *pro tanto* such items and the security remain to cover only the limited amount minus such payments. It is not

necessary to limit the amount to be secured to a fixed sum, it being provided for the purpose of stamping by s. 107 of The Stamp Act, 1870 (33 & 34 Vict. c. 97), that the security for the payment of money which may become due upon an account current, either with or without money previously due, where the total amount secured is unlimited, is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover.

Company on account current from the firm of Messrs. _____ and Co. of &c., whosoever may be the persons or person for the time being constituting such firm and whatever may be the style by which such firm may be called or known. Dated the _____ day of _____.

The schedule to the above-written memorandum.

(List of Deeds.)

LXV.

BILL OF SALE (*k*).

THIS INDENTURE made the _____ day of _____ Between A. of &c., (*mortgagor*) of the one part and M. of

(*k*) This bill of sale is taken from the schedule of the Bills of Sale Act. (1878) Amendment Act, 1882, 45 & 46 Vict. c. 43, the commencement of which is the 1st November, 1882. This Act enacts :—

s. 4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale ; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule ; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

s. 5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

s. 6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect

of any of the following things ; (that is to say),

(1). Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2). Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

s. 7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—

(1). If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein

&c. (*mortgagee*) of the other part, WITNESSETH that in consideration of the sum of £—— now paid to the said A. by the said M., the receipt of which the said A. hereby acknowledges [*or whatever else the consideration may be*] he the said A. doth hereby assign unto the said M. his executors administrators and assigns ALL AND SINGULAR the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £—— and interest thereon at the rate of £—— per cent. per annum [*or whatever else may be the rate*]. AND the said A. doth further agree and declare that he will duly pay to the said M. the principal sum aforesaid together with the interest then due by equal ——— payments of £—— on the ——— day of—— [*or whatever else may be the stipulated times or time of payment*]. AND the said A. doth also agree with the said M. that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*]. PROVIDED

provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security ;

(2). If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes ;

(3). If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises ;

(4). If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ;

(5.) If execution shall have been levied against the goods of the grantor under any judgment at law :

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

s. 9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

s. 12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

ALWAYS that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said M. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882. IN WITNESS &c.

Signed and sealed by the said A. in the presence of
me [*add witness's name, address, and de-
scription*].

LXVI.

AGREEMENT to let a FURNISHED HOUSE.

AN AGREEMENT made the —— day of ——
Between A. of &c. (*landlord*) of the one part and L. of &c.
(*tenant*) of the other part, WHEREBY IT IS AGREED as
follows:—

Premises
and rent.

1. The said A. will let and the said L. will take the dwelling-house and premises being No. —— in —— Street in the City of —— together with the fixtures furniture and effects therein as specified in the schedule hereto for the term of six calendar months commencing from the —— day of —— at the rent of £—— per month payable each month in advance.

Breakages,
&c.

2. The said L. shall make good all breakages and damages done to the said fixtures furniture or effects, and at the expiration of the tenancy shall deliver up possession of the said house and premises together with the said fixtures furniture and effects in as good and sound a condition as at the commencement of the tenancy, reasonable wear and tear and damage by fire only excepted.

Landlord
to pay
taxes.

3. The said A. will pay all rates taxes and other outgoings payable in respect of the said house and premises during the continuance of this tenancy. IN
WITNESS &c.

LXVII.

AGREEMENT for a TENANCY from YEAR to YEAR.

AN AGREEMENT made the —— day of ——
Between A. of &c. (*landlord*) of the one part and L. of &c.

(tenant) of the other part, WHEREBY IT IS AGREED as follows:—

1. The said A. will let and the said L. will take the Premises. dwelling-house numbered ——— in ——— Street in the parish of ——— in the City of ——— with the stables outbuildings yard garden and grounds adjoining and heretofore occupied therewith.

2. The tenancy shall be from year to year commencing Tenancy from the ——— day of ——— and determinable at the to be from end of the first or any subsequent year by six calendar year to months' previous notice in writing by either party

3. The rent shall be the sum of £—— yearly pay- Rent. able by equal quarterly payments without any deduction on the ——— day of ——— &c. the first of such payments to be made on the ——— day of ——— next.

4. The said L. shall pay all rates taxes and outgoing Rates and taxes. for the time being payable in respect of the said premises.

5. The said L. shall keep the said premises in good and Repairs. tenantable repair and condition and shall use the same for the purposes of a dwelling-house only and shall at the expiration or sooner determination of the tenancy deliver up the said premises in such good and tenantable repair and condition.

6. The said L. shall not assign or underlet the said Not to assign. premises without the previous consent in writing of the said A.

7. If any rent shall be in arrear for twenty-one days or Re-entry. if the said L. shall commit any breach of the conditions herein contained, it shall be lawful for the said A. to re-enter the said premises without giving any notice to the said L. and to determine the tenancy.

8. The said L. paying the said rent and observing and Quiet enjoyment. performing the above conditions shall quietly hold and enjoy the said dwelling-house and premises without any eviction or disturbance by the said A. or any person claiming under him. IN WITNESS &c.

LXVIII.

LEASE *by the* FREEHOLDER *of* DWELLING-HOUSE *for*
 TWENTY-ONE *years, determinable at the end of seven*
or fourteen years, with OPTION *to lessee to* PURCHASE
 the FEE.

THIS INDENTURE made the ——— day of ———
 Between A. of &c. hereinafter called the lessor of the one
 part and L. of &c. hereinafter called the lessee of the other
 part, WITNESSETH that in consideration of the rent
 and covenants hereinafter reserved and contained the said
 lessor doth hereby demise unto the said lessee his
 executors administrators and assigns ALL that messuage
 or dwelling-house being No. ——— in ———
 Street in the parish of ——— in the City of ———
 with the stables outbuildings yard garden and grounds
 held therewith, To HAVE AND TO HOLD the messuage and
 premises hereby demised unto the said lessee his executors
 administrators and assigns for the term of twenty-one
 years from the ——— day of ———, YIELDING AND PAY-
 ING therefor during the said term the yearly rent (*l*) of
 £—— payable quarterly on the ——— day of ———
 &c. in every year without any deduction whatsoever (land
 tax and landlord's property tax only excepted), the first of
 such quarterly payments to be made on the ——— day of
 ——— next, AND ALSO YIELDING AND PAYING in the
 event of the determination of the said term under the
 proviso for re-entry hereinafter contained a proportional
 sum for the fraction of the then current quarter up to the
 day of such re-entry such proportional sum to be paid
 immediately upon the determination of the said term.
 AND the said lessee doth hereby covenant with the said
 lessor that he the said lessee his executors administrators
 or assigns will during the continuance of the said term

Rent.

Covenants
by lessee to
pay rent

(*l*) Rent and the benefit of the
 lessee's covenants and the obligation
 of the lessor's covenants run with
 the reversion, see Conveyancing Act,
 1881, ss. 10, 11, p. 262.

punctually pay the said rent on the days and in manner aforesaid, And will also pay all rates taxes and outgoings ^{and taxes.} which are or may become payable in respect of the said messuage and premises or any part thereof land tax and landlord's property tax only excepted: AND also will at all ^{To repair.} times during the said term at his and their own cost repair the said messuage and premises and keep the same in good condition and complete repair: AND also during the ^{To paint.} said term will once at least in every three years paint all the outside wood iron and other work previously or usually painted with two coats of best oil paint in a workmanlike manner, And once at least in every seven years paint all the inside wood iron and other work previously or usually painted with two coats of best oil paint in a workmanlike manner: AND also will permit the said lessor and all ^{Lessor may view condition.} persons authorised by him with or without workmen and others at all reasonable times to enter the said messuage and premises to view the condition thereof and to give to or leave upon the said premises for the said lessee notice in writing of all decays defects and wants of repair which may be found, And will thereupon within three calendar months properly repair and make good such decays defects and wants of repair: AND also will during the said term ^{Lessee to insure.} keep the said messuage and premises insured against loss or damage by fire in the sum of £—— at the least in the joint names of the said lessor and of the said lessee with the —— Insurance Office or some other office or offices to be approved by the said lessor, And will pay all premiums and sums of money payable in respect of such insurance, And will on demand produce to the said A. the policy or policies of such insurance and the receipts for such payments, And will forthwith lay out or permit to be laid out all moneys which shall be received under any such insurance in rebuilding and restoring the said messuage and premises or such part thereof as shall have been destroyed or damaged by fire and in case the moneys received shall be insufficient for that purpose will make good the deficiency at his and their own cost: AND also will not ^{Not to}

alter premises.	make or permit to be made any addition or alteration to the said messuage and premises without the previous consent
Not to trade.	in writing of the said lessor: AND will not carry on or permit to be carried on any trade or business in or upon the said messuage and premises or any part thereof or use or permit the same to be used otherwise than as a private dwelling-house: AND also will not assign or underlet or part with the possession of the said messuage and premises or any part thereof without the previous consent in writing of the said lessor: AND will at the expiration or sooner determination of the said term quietly surrender and yield up to the said lessor the said messuage and premises in such good condition and complete repair as aforesaid.
Not to assign.	
To yield up.	
Proviso for re-entry.	PROVIDED ALWAYS and it is hereby agreed that if the said yearly rent of £—— or any part thereof shall be in arrear for twenty-one days after any of the aforesaid days appointed for payment whether the same shall have been legally demanded or not, or if any of the covenants hereinbefore contained on the part of the said lessee shall not have been observed and performed, then it shall be lawful for the said lessor at any time thereafter into and upon the said messuage and premises or any part thereof in the name of the whole to re-enter and thereupon this present demise shall determine (m). AND (n) he the said lessor doth hereby covenant with the said lessee that he the said lessee his executors administrators and assigns paying the said yearly rent hereby reserved and observing and performing the covenants and conditions on his and their part hereinbefore contained shall quietly hold and enjoy the said messuage and premises during the said term without any eviction or disturbance by the said lessor his heirs or assigns or any
Covenant by lessor for quiet enjoyment.	

(m) The right of re-entry or forfeiture is restricted by s. 14 of the Conveyancing Act, 1881, see p. 264.

(n) This covenant is inserted for the protection of the lessor, in order to qualify the absolute covenant for

quiet enjoyment which is implied in the word "demise" and no alteration in this respect is made by the Conveyancing Act, 1881, see s. 7, subs. 5, p. 258.

person or persons lawfully claiming through under or in trust for him or them or any of them. PROVIDED ALWAYS and it is hereby agreed that it shall be lawful for the said lessee his executors administrators or assigns (o) to determine this demise at the end of seven or fourteen years from the commencement thereof upon giving to the said lessor his heirs or assigns or leaving at his or their last known place or places of abode six calendar months' previous notice in writing. PROVIDED ALWAYS (p) and it is hereby agreed that if the said lessee his executors administrators or assigns shall during the continuance of the said term give to the said lessor his heirs or assigns or leave at his or their last known place or places of abode notice in writing that he or they the said lessee his executors administrators or assigns is or are desirous of purchasing the fee simple of the said messuage and premises hereby demised for the sum of £——, such notice to be given or left not less than six calendar months previous to and to expire on one of the days hereinbefore appointed for payment of rent, then and in such case the said lessor his heirs or assigns will at the expiration of such notice or so soon thereafter as can be upon payment of the said sum of £—— and of all rent then accrued due convey and assure the said messuage and premises and the inheritance thereof in fee simple free from incumbrances unto the said lessee his heirs and assigns or as he his executors administrators or assigns shall direct. PROVIDED ALWAYS and it is hereby further agreed that the said lessor his heirs or assigns shall within one calendar month after receiving such last mentioned notice deliver to the said lessee his executors administrators or assigns or his or their solicitors an abstract of title to the said messuage and premises, such title to commence with an Indenture dated &c. and made

Lease may be determined after seven or fourteen years.

Option to lessee to purchase fee.

(o) If it is intended that the benefit of these provisions should extend to the executors administrators and assigns of the lessee it should be so expressed.

(p) Trustees are not competent to give such an option to a lessee, see *Clay v. Bufford*, 5 De G. & Sm. 768.

Lease of Public House by Brewers.

&c. (*Here insert any special conditions which may be necessary*). And the said lessee his executors administrators or assigns shall within twenty-one days after the delivery of the abstract send his objections and requisitions if any in writing, and any objection or requisition not so sent shall be deemed to be waived, And if any objection or requisition shall be made which the said lessor his heirs or assigns shall be unable or unwilling to remove or comply with it shall be lawful for the said lessor his heirs or assigns to rescind the sale upon giving notice in writing but without payment of any compensation or costs. IN WITNESS &c.

 LXIX.
LEASE of a PUBLIC HOUSE by Brewers.

THIS INDENTURE made the ——— day of ——— Between M. and N. of &c. carrying on the business of Brewers as co-partners under the firm of ——— & Co. (hereinafter called the lessors) of the one part and L. of &c. (hereinafter called the lessee) of the other part, WITNESSETH that in consideration of the sum of £—— now paid by the lessee to the lessors, The receipt whereof the lessors do hereby acknowledge, and also in consideration of the rents covenants and conditions hereinafter reserved and contained and on the part of the lessee to be paid observed and performed, They the lessors do and each of them doth hereby demise unto the lessee his executors administrators and assigns ALL that messuage or public house known as ——— situate &c. with the outbuildings yard and garden thereto belonging as the same are now in the occupation of the lessee, TO HAVE AND TO HOLD the messuage and premises hereby demised unto the lessee his executors administrators and assigns for the term of ——— years from the ——— day of ———, YIELDING AND PAYING therefor (*as in former precedent, see p. 122*). PROVIDED ALWAYS and it is hereby

Lessee to
deal with
brewers.

agreed and declared that if and so long as the lessee his executors administrators or assigns shall deal with the said firm of ————— & Co. for all the ale beer stout and porter sold or consumed on the said demised premises and with no other firm or brewer or dealer the lessee his executors administrators and assigns shall be entitled to pay and the lessors their heirs and assigns will accept the rent of £———— only instead of the aforesaid rent of £———. (*Covenants by lessee for payment of rent and rates and taxes, to paint and repair, to insure and not to make any alteration, see pp. 122 and 123*): AND also will during the continuance of the said term use the said demised premises as a public house or licensed victualling house only, so long as the necessary licenses can be obtained, and will not do or suffer to be done on the said demised premises anything which may be or become a damage nuisance or annoyance to the lessors. (*Covenants by lessee not to assign or underlet, and to deliver up at the end of the term, see p. 124*): AND will whenever necessary apply for and use his and their best endeavours to procure a renewal of the necessary licenses for using and keeping open the said demised premises as a tavern or public house for the sale and consumption of beer wine and spirits by retail, And will not do or suffer any thing whereby the said licenses or any of them may be or become liable to be forfeited or the renewal thereof withheld: AND will on the expiration or sooner determination of the said term do all necessary acts for transferring and delivering up to the lessors their heirs or assigns or such person or persons as they shall direct the existing license or licenses on payment of the fair proportion for the unexpired portion thereof. (*Proviso for re-entry in case the rent is not paid, see p. 124. Covenant by lessors for quiet enjoyment, see p. 124*). IN WITNESS &c.

To use premises as public house.

To keep up licenses,

and assign them to successor.

LXX.

AGREEMENT for a BUILDING LEASE for *ninety-nine years* by a TENANT for LIFE under the SETTLED LAND ACT, 1882. PROVISIONS for SEPARATE LEASES to the NOMINEES of the BUILDER (q).

AN AGREEMENT made the ——— day of ——— Between A. of &c. (*tenant for life*) of the one part and L. of &c. (*builder and lessee*) of the other part, WHEREBY IT IS AGREED as follows:—

Agree-
ment for
lease for
99 years.

Parcels.

Rent.

Lessee
to erect
houses.

1. The said A. as tenant for life in possession of the hereditaments hereinafter described agrees to grant under the provisions of the Settled Land Act, 1882, and the said L. agrees to accept a lease for ninety-nine years from the ——— day of ——— of ALL that piece of land &c. as the same is delineated and described on the plan drawn in the margin of the ——— skin of these presents, and thereon marked out into twenty divisions, the whole being coloured red.

2. The rent of the said premises shall be during the first ——— years (r) of the said term a peppercorn rent if demanded, and during the residue of the said term the rent of £—— for every year payable quarterly on the 25th day of March the 24th day of June the 29th day of September and the 25th day of December without any deductions except landlord's property tax if any.

3. The said L. will at his own cost within ——— years from the date hereof erect and build with good and proper materials and to the satisfaction of the surveyor of the said A. or of his successors in title twenty brick-built dwelling-houses with slate roofs, with stables and outbuildings to each dwelling-house, according to the plans and elevations to be prepared by the said L. at his own expense and to

(q) See ss. 6, 7, 8, 10 of Settled Land Act, 1882, p. 335. The most convenient way of granting building lease is usually to enter into an agreement or contract with the builder that he shall erect the

houses and that the lessor will then grant leases direct to the builder's nominees.

(r) Not more than five years, see s. 8, subs. 2 of Settled Land Act, 1882, p. 336.

be approved by such surveyor, and will within the time aforesaid in a good and workmanlike manner complete finish and render fit for habitation the said twenty dwelling-houses with the stables and outbuildings and with all proper drains sewers watercourses and conveniences in a good and workmanlike manner with sound and substantial materials to the satisfaction of such surveyor.

4. The said L. shall expend the sum of £—— at least in the erection of each of the said dwelling-houses before the same shall be completely roofed in. Each house to cost £—.

5. No building shall be erected on any part of the said hereditaments otherwise than in accordance with the said plans and elevations. No other buildings to be erected.

6. The said L. shall within the said —— years lay down and level and make with all proper materials to the satisfaction of such surveyor a road between the points marked A. and B. on the said plan of the uniform breadth of —— feet at the least with a pavement on either side of the said road of a uniform breadth of —— feet at the least. Lessee to make road.

7. So soon as any such dwelling-house shall have been roofed in to the satisfaction of such surveyor the said A. will grant a lease thereof to the said L. or his nominee for the said term of ninety-nine years from the —— day of —— at such an apportioned rent as the said L. and such surveyor shall agree upon in accordance with the provisions of the Settled Land Act, 1882. The lessor's title to grant such lease shall not be inquired into. Lessor to grant leases to nominees.

8. Every such lease shall be made in accordance with the provisions of the Settled Land Act, 1882, and in particular shall contain the following covenants on the part of the lessee, that is to say: A covenant to complete within the said —— years from the date hereof the said dwelling-house with the stables and outbuildings in accordance with the provisions of this agreement; A covenant to contribute a reasonable proportion towards the maintenance and repair of the said roads and pavements Every lease to contain covenants &c.

Agreement for Building Lease.

and the cleansing and repairing the sewers and drains thereunder the amount to be determined by such surveyor as aforesaid and to be recoverable as rent in arrear ; A covenant to pay the rent and all rates taxes assessments and outgoings (landlord's property tax only excepted) in respect of the dwelling-house and premises thereby demised ; A covenant to repair the said dwelling-house and premises and to keep the same in good condition and complete repair ; A covenant to paint all the outside wood and iron work once at least in every three years and the inside wood and iron work once at least in every seven years ; A covenant to permit the said A. and his successors in title and his and their agents at all reasonable times to enter the said dwelling-house and premises to view the condition thereof and to give to the lessee notice of all decays and wants of repair and a covenant to make good such decays and wants of repair within three months ; A covenant to insure the said dwelling-house and premises in the sum of two thirds of the amount of the rent at the least in the joint names of the said A. and the lessee, and to pay all premiums and produce all receipts for premiums and to lay out all moneys received under any such insurance in rebuilding the said dwelling-house and premises and in case the moneys received shall be insufficient then to make good the deficiency at the cost of the lessee ; A covenant not to make any addition or alteration to the said dwelling-house and premises ; A covenant not to carry on or permit to be carried on any trade or business but to use the said dwelling-house and premises as a private dwelling-house only ; A covenant at the expiration or sooner determination of the said term quietly to yield up the said dwelling-house and premises in good condition and complete repair. And every such lease shall contain a proviso for re-entry in case of non-payment of rent or breach of any covenant. And every such lease shall be prepared by the solicitor of the said A. and shall be in such form as the said solicitor shall require for the purpose of carrying out this agreement, and a counterpart of

such lease shall be executed by the lessee and delivered to the said A. The costs of the preparation and execution of every such lease and counterpart shall be paid by the said L. or his nominee.

9. If the said L. or his nominees shall fail in erecting and completing the said dwelling-houses and stables and out-buildings and in rendering them fit for habitation within the said —— years or shall fail to comply with the terms of this agreement it shall be lawful for the said A. notwithstanding anything that may have been done thereunder to determine and make void this agreement except as to such parts of the said hereditaments as shall have been actually demised.

In case of default by lessee, agreement may be avoided.

10. Nothing herein contained shall operate as a present demise or to vest the said hereditaments in the said L.

Agreement not to operate as lease.

IN WITNESS &c.

LXXI.

BUILDING LEASE *by TENANT for LIFE under the SETTLED LAND ACT, 1882, to a NOMINEE of the BUILDER.*

THIS INDENTURE made the —— day of —— Between A. of &c. (*tenant for life*) of the 1st part L. of &c. (*builder*) of the 2nd part and P. of &c. (*nominee of builder*) of the 3rd part, WITNESSETH that in consideration of the expense already incurred by the said L. in erecting the dwelling-house hereinafter mentioned and in consideration of the rents and covenants hereinafter contained and on the part of the said P. to be paid observed and performed respectively the said A. in exercise of the power for this purpose given to him by the Settled Land Act, 1882, as tenant for life in possession of the hereditaments intended to be hereby demised and of every other power enabling him in this behalf doth hereby by the direction of the said L. demise unto the said P. his executors administrators and assigns ALL that piece of land situate &c. and containing —— acres by admeasurement

Parcels.

as the same is delineated on the plan drawn in the margin of the ——— skin of these presents and thereon coloured red, Together with the messuage or dwelling-house now erected and in course of completion thereon, To HAVE AND TO HOLD the piece of land messuage and premises hereby demised UNTO the said P. his executors administrators and assigns for the term of ninety-nine years from the ——— day of ———, YIELDING AND PAYING therefor during the first ——— years of the said term the rent of a peppercorn if demanded and during the residue of the said term the

Rent. yearly rent of £—— payable quarterly on the 25th day March &c. every year without any deduction whatsoever (landlord's property tax if any only excepted) the first of such payments to be made on the ——— day of ———

Covenants by lessee next. AND the said P. doth hereby covenant with the said A. that he the said P. his executors administrators

to pay rent or assigns will during the continuance of the said term punctually pay the said rent on the days and in manner

and taxes, aforesaid, AND will also pay all rates taxes assessments and outgoings which are or may become payable in respect of the said premises hereby demised or the buildings erected thereon (landlord's property tax if any only excepted): AND ALSO will within the period of ——— years from the said ——— day of ——— complete finish

to complete dwelling-house, and render fit for habitation the said dwelling-house with the stables and outbuildings thereon and with all proper drains sewers watercourses and conveniences in a good and workmanlike manner with sound and substantial materials to the satisfaction of the surveyor of the said A. or his successors in title and in accordance with the plans and elevations already approved by the said surveyor and signed by him and the said L.: AND will not erect any

not to erect other buildings, building on the said piece of land hereby demised otherwise than in accordance with the said plans and elevations:

to contribute towards repair of road. AND will contribute a reasonable proportion towards the maintenance and repair of the road marked on the said plan and thereon called ——— Road and the pavements thereon and towards the cleaning and repairing the drains and

sewers under the said road, the amount of such contribution to be determined by the said surveyor of the said A. or of his successors in title and to be recoverable as rent in arrear: (*Add covenants to repair, to paint, to permit the lessor to view the condition of the premises, and thereupon to repair defects, to insure, not to alter the premises, not to trade on the premises, quietly to yield up, Proviso for re-entry, Covenant by lessor for quiet enjoyment, as in Prec. LXVIII., p. 123, mutatis mutandis*). IN WITNESS &c.

LXXII.

UNDERLEASE *at advanced rent.*

THIS INDENTURE made the ——— day of ——— Between L. of &c. (*underlessor*) of the one part and U. of &c. (*underlessee*) of the other part, WHEREAS by an Lease. Indenture dated &c. and made between A. of the one part and the said L. of the other part ALL &c. (*parcels from lease*) with the appurtenances were demised by the said A. to the said L. his executors administrators and assigns for the term of ——— years from the ——— day of ——— at the yearly rent thereby reserved and subject to the covenants and conditions therein contained and on the part of the lessee to be observed and performed, AND Agreement for under-lease. WHEREAS the said L. has agreed to grant to the said U. an underlease of the said premises upon the terms hereinafter expressed, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and [in consideration of the said sum of £——— now paid by the said U. to the said L., The receipt whereof the said L. doth hereby acknowledge, and also] in consideration of the rent hereinafter reserved and the covenants hereinafter contained on the part of the said U. He the said L. doth hereby demise Demise of premises. unto the said U. his executors administrators and assigns ALL AND SINGULAR the messuage or dwelling-house with the stables outbuildings yard garden grounds and premises comprised in the hereinbefore recited Indenture of Lease

TO HAVE AND TO HOLD the messuage and premises hereby demised unto the said U. his executors administrators and assigns for the term of ——— years from the ——— day of ———, YIELDING AND PAYING therefor during the said term hereby granted the yearly rent of £—— payable quarterly on the ——— day of ——— &c. in every year without any deduction whatsoever the first of such quarterly payments to be made on the ——— day of ——— next, AND ALSO YIELDING AND PAYING &c. (*see p. 122*). AND the said U. doth hereby covenant with the said L. that he the said U. his executors administrators or assigns will during the continuance of the said term hereby granted punctually pay the said rent hereby reserved on the days and in manner aforesaid, And will also pay all rates taxes and outgoings which are or may become payable in respect of the said messuage or premises or any part thereof: AND also will at all times during the said term hereby granted observe and perform all the covenants and conditions contained in the hereinbefore recited Indenture of Lease and on the part of the lessee to be observed and performed except the covenant therein contained for payment of the rent thereby reserved and will keep indemnified the said L. his executors administrators and assigns against the said covenants and conditions and all actions claims and demands on account thereof: AND will at the expiration or sooner determination of the said term hereby granted quietly surrender and yield up to the said L. his executors administrators or assigns the said messuage and premises in such good condition and complete repair as that in which the said messuage and premises are required to be surrendered by the hereinbefore recited Indenture of Lease at the expiration or sooner determination of the term thereby granted. (*Proviso for re-entry, see p. 124, mutatis mutandis*). AND the said L. doth hereby covenant with the said U. that he the said U. his executors administrators and assigns paying &c. (*covenant for quiet enjoyment, see p. 124, mutatis mutandis*): AND also that he the said L. his executors administrators and assigns will during the said

Covenant
by under-
lessee to
pay rent
&c.,

and to
observe
the cove-
nants of
the lease,

To yield
up.

Covenant
by lessor

term hereby granted pay the rent reserved by the aforesaid Indenture of Lease, and will at all times during such term keep indemnified the said U. his executors administrators and assigns and his and their estates and effects against the payment of such rent and against all actions claims and demands on account thereof. AND the said L. hereby gives to the said U. an acknowledgment of the right of the said U. to production of the said Indenture of Lease and to delivery of copies thereof and an undertaking for the safe custody thereof. IN WITNESS &c.

to pay the
rent under
his lease.

Custody
of lease.

LXXIII.

SURRENDER of a LEASE.

THIS INDENTURE made the ——— day of ——— Between L. of &c. (*lessee*) of the one part and A. of &c. (*lessor*) of the other part, WHEREAS by an Indenture dated &c. and made between the said A. of the one part and the said L. of the other part the said A. demised unto the said L. his executors administrators and assigns All and singular the messuage or dwelling-house being No. ——— in ——— Street in the parish of ——— in the City of ——— for the term of ——— years from the date thereof, AND WHEREAS the said L. has duly paid the rent reserved by and observed and performed the covenants on his part contained in the aforesaid Indenture of Lease down to the date of these presents, AND WHEREAS the said L. has agreed with the said A. for the surrender to him of the messuage and premises comprised in the aforesaid Indenture of Lease for the residue of the said term of ——— years for the sum of £——, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said A. to the said L., The receipt whereof the said L. doth hereby acknowledge, He the said L. doth hereby surrender unto the said A. and his heirs ALL AND SINGULAR the messuage or dwelling-

Recital of
lease.

Agree-
ment for
surrender

Enlargement of a Long Term.

house and premises comprised in and demised by the aforesaid Indenture of Lease, TO THE INTENT that the residue of the said term of ——— years created by the said Indenture of Lease may be merged and extinguished in the reversion and inheritance of the same messuage and premises. AND the said L. doth hereby covenant with the said A. that he the said L. has not done or knowingly suffered or been party or privy to any act deed or thing whereby the messuage and premises hereby surrendered or any part thereof may be charged incumbered or in any way affected (r). IN WITNESS &c.

LXXIV.

DEED OF ENLARGEMENT OF A LONG TERM (s).

TO ALL TO WHOM THESE PRESENTS SHALL COME A. of &c. sends greeting, WHEREAS the said A. is beneficially entitled in right of the term of ——— years created by an Indenture dated &c. and made &c. to possession of certain land and hereditaments comprised in the

(r) There does not seem to be any covenant implied under the Conveyancing Act, 1881, appropriate to a lessee surrendering, unless perhaps he is willing to surrender "as beneficial owner," and to give the full covenants thereby implied.

(s) This enlargement is effected under sect. 65 of the Conveyancing and Law of Property Act, 1881, the terms of which it seems desirable to follow as closely as possible. The section provides that any person to whom the right of enlarging is given may enlarge the term whether subject to any incumbrance or not, and that thereupon by virtue of the deed and of the Act (conjointly that is) the term shall become and be enlarged accordingly, and the person in whom the term was pre-

viously vested shall acquire and have in the land a fee simple instead of the term, subject to all the same trusts &c. as the term was subject to. If therefore an enlargement is effected by a mortgagor, the term vested in the mortgagee becomes a fee simple. The mortgagee however has no power to enlarge unless he is in possession, though it would seem from subs. 2, iii., that the personal representatives of a deceased mortgagee in whom the term is vested may enlarge although not in possession. If a term vested in a mortgagee be enlarged, the mortgagee should on being paid off convey the property as freehold, instead of assigning or surrendering the term. See p. 301.

said term for the residue of the said term whereof 200 years and more are now unexpired without any trust or right of redemption affecting the said term in favour of the freeholder or other person entitled in reversion expectant on the said term and without any rent now subsisting incident to the reversion, NOW THESE PRESENTS WITNESS that the said A. in exercise of the power for this purpose given by the Conveyancing and Law of Property Act, 1881, so far as regards the land and hereditaments to which he is entitled or in which he is interested in right of the said term as aforesaid doth by this deed declare that from and after the execution hereof the said term shall be enlarged into a fee simple. IN WITNESS &c.

LXXV.

DEED of PARTNERSHIP.

THIS INDENTURE made the ——— day of ———
Between M. of &c. of the one part and N. of &c. of the
other part, WITNESSETH that each of them the said M.
and N. doth hereby covenant with the other of them that
they the said M. and N. will become and remain partners
in the business of ——— upon the terms and
subject to the conditions and provisions following: that
is to say,

Firm. 1. The style and firm of the partnership shall be
"M. and Co."

**Place of
business.** 2. The business of the partnership shall be carried
on at No. ——— in ——— Street in the City
of ———, or elsewhere as the partners shall
agree.

Term. 3. The partnership shall continue for the term of
——— years commencing from the date of these presents.
Provided that either partner shall be at liberty to deter-
mine the partnership on giving to the other partner or
leaving for him at the place of business for the time
being of the partnership six calendar months' previous
notice in writing to that effect. And at the expiration
of such notice the partnership shall be determined
accordingly.

Capital. 4. The capital of the partnership shall consist of the
sum of £ ——— to be brought into the business by the
partners in the proportions following (t): that is to say,
the sum of £ ——— being two third parts thereof by the

(t) If the partners are interested 8, 11, 21, 22 and 24 will have to be
in equal shares the provisions con- modified so as to put the partners
tained in this Article and in Articles upon an equal footing.

said M., and the sum of £ ——— being one third part thereof by the said N. Each partner shall be entitled to interest at the rate of £5 per cent. per annum from the date of these presents payable half-yearly on the sum brought in by him as aforesaid. Any further capital which both the partners shall consider to be required shall be brought in by them in the same proportions, and shall bear interest at the same rate from the time of being brought in payable half-yearly. If either partner shall with the consent of the other partner advance any sum as capital beyond his proportion as aforesaid, such sum shall be deemed to be a debt due from the partnership to the partner advancing the same and shall bear interest at the rate of £5 per cent. per annum from the date of the advance payable half-yearly in priority to the interest on the rest of the capital: And such sum or any part thereof shall be repaid on either partner giving to the other partner or leaving for him at the place of business for the time being of the partnership six calendar months' notice in writing.

5. The bankers of the partnership shall be Messrs. Bankers. ———, or such other bankers as the partners shall agree upon: and all moneys belonging to the partnership shall be paid into the bank to the partnership account. Each partner shall be at liberty to draw cheques in the name of the firm.

6. The said messuage No. ——— in ——— Premises. Street being the property of the said M. he shall be paid by the partnership the yearly sum of £ ——— for the rent thereof and of the fixtures and fittings therein, so long as the said business shall be carried on there; such sum of £ ——— to be paid half-yearly on the ——— day of ——— and the ——— day of ——— in every year without any deduction.

7. The said rent of £ ——— or the rent of any other premises where the said business shall for the time being be carried on, and the cost of repairs and alterations, and all rates taxes payments for insurance and other outgoings and expenses.

in respect of the business premises, and the wages and salaries of all clerks servants and other persons employed in the said business, and all expenses incurred in carrying on the said business, and all moneys which shall become payable upon account thereof, and also all losses incurred in the said business shall be paid out of the gross profits of the business ; or in case the same shall not be sufficient, then by the partners in the same proportions in which they shall for the time being be entitled to the net profits.

Drawings. 8. The said M. shall be at liberty to draw out of the said partnership for his own purposes the sum of £ ——— on the ——— day of ———, the ——— day of ———, the ——— day of ———, and the ——— day of ——— in every year during the continuance of the partnership : And the said N. shall be at liberty in like manner to draw out the sum of £ ——— on the same days. If upon taking the accounts next hereinafter directed it shall be found that either partner has drawn out in the course of the year sums altogether amounting to more than his share of the net profits, he shall refund to the partnership such sum as he shall be found to have received in excess.

Accounts. 9. Proper books of accounts shall be kept by the partners, and entries made therein of all such transactions and things as are usually entered in books of accounts kept in a business of a similar nature. Such books and all letters and documents belonging to the partnership and not kept at the bankers shall be kept at the office of the partnership for the time being, and each partner shall have free access to examine and copy the same.

Annual accounts and stock-taking. 10. On the ——— day of ——— in every year during the continuance of the partnership the partners shall make a full account in writing of the stock in trade credits and effects belonging to the said partnership and of all debts and liabilities thereof, according to the mode of making out such accounts usual in a business of a similar nature. Such account shall be written in two books and

signed in each book by both partners, and after such signature each of the partners shall take one of such books and shall be bound by such account, except that if either partner shall find any manifest error therein and shall notify the same to the other partner within three calendar months after the same shall have been signed as aforesaid such error shall be rectified.

11. The partners shall be entitled to the net profits of the business in the proportions following: that is to say, the said M. to two third parts of such profits, and the said N. to one third part thereof. And immediately after the signing of the aforesaid account such profits shall be distributed accordingly. Net profits.

12. Each partner shall diligently and faithfully employ himself [during the whole of his time] in the conduct and management of the said business [and shall not either directly or indirectly engage in any other business]. Partners to employ themselves in the business.

13. Each partner shall be faithful and just to the other partner in all matters relating to the partnership, and shall upon every reasonable request render to the other partner a true account of his dealings and transactions in connexion with the partnership. To be faithful to the other.

14. Neither partner shall without the consent of the other partner take any apprentice, or hire or dismiss, except for gross misconduct, any clerk or servant in the business of the partnership. Every premium received with any apprentice shall be considered as part of the profits of the partnership and divided accordingly. Neither partner without consent of other to hire servants &c.

15. Neither partner shall without the written consent of the other partner employ any of the moneys goods or other effects of the partnership, or draw accept or sign any bill of exchange or promissory note, or contract any debt on account of the partnership, or engage the credit thereof except in the usual and regular course of business. or engage the partnership property,

16. Neither partner shall without the written consent of the other partner buy or enter into any contract for the purchase of any goods exceeding £ ——— in or purchase goods exceeding £ ———,

value. If either partner shall so purchase goods without such consent, such goods shall at the option of the other partner be taken to have been purchased, either on behalf of the partnership, or by the partner purchasing the same on his own behalf and to be paid for out of his own moneys.

or give
credit
where
forbidden,

17. Neither partner shall enter into any contract with or give credit or advance any moneys belonging to the partnership to any person whom the other partner shall by notice in writing have forbidden him to trust.

or com-
pound
debts,

18. Neither partner shall without the written consent of the other partner compound or release any debt or right belonging to the partnership without receiving the full amount or value thereof.

or become
bail or
surety.

19. Neither partner shall without the written consent of the other partner become bail or surety or security for any person or subscribe any policy of insurance or do or knowingly suffer anything whereby the stock in trade or other effects of the partnership may be seized extended or taken in execution.

Each
partner
to pay his
own debts.

20. Each partner shall duly pay and discharge his own private debts, and shall keep indemnified the other partner and the stock in trade and effects of the partnership against such debts and against all claims and demands on account thereof.

Power to
senior
partner to
expel
junior
partner.

21. If the said N. shall become bankrupt or shall take any proceedings for the liquidation of his affairs or for compounding with his creditors, or shall do anything contrary to the conditions and provisions hereinbefore contained, then and in any of the said cases it shall be lawful for the said M. to dissolve the partnership by giving notice in writing to the said N. or by leaving such notice for him on the business premises of the partnership for the time being. And the partnership shall from the time of giving or leaving such notice determine, but without prejudice to any remedies of the said M. against the said N. for breach or non-performance of any of the conditions and provisions hereinbefore contained.

22. Within six calendar months after the expiration or ^{Winding up on ex-} sooner determination of the partnership during the joint ^{piration of} lives of the partners a full and general account of the ^{partner-} stock in trade credits and effects belonging to the partnership and of all debts and liabilities thereof shall be taken in writing. The said M. shall have the option of taking on himself the whole of the said business and of purchasing the share of the said N. in the said stock in trade credits and effects at a sum to be agreed upon by the partners, or otherwise to be ascertained by the valuation of two indifferent persons, one to be appointed by the said M. and the other by the said N. or of an umpire to be appointed by the valuers before they proceed to the valuation: and if the said N. shall refuse or neglect to appoint a valuer or to give notice to the said M. of his appointment within fourteen days after being required by the said M. in writing so to do, or if the valuer appointed by the said N. shall neglect to act, then the valuer appointed by the said M. shall make his valuation alone, and his decision shall be final and binding on both partners. The said M. shall be at liberty to pay the amount of such valuation in three equal instalments at the expiration of six twelve and eighteen calendar months respectively from the date of the dissolution of the partnership, on entering into a bond in a sufficient penalty to the said N. for securing to him the payment of such instalments with interest at the rate of £5 per cent. per annum from the date of the dissolution, and also a bond in a sufficient penalty for indemnifying the said N. against the debts and liabilities of the partnership. And the said N. shall execute a proper assignment or assurance for vesting his share in the said M. and for enabling the said M. to get in all the credits and effects due or belonging to the partnership. But if the said M. shall elect not to purchase the share of the said N. then and in that case provision shall be made for paying and meeting the debts and liabilities of the partnership including any money advanced by either partner in excess of his proportion of capital as afore-

said, and subject to such provision the capital and all other effects of the partnership shall be divided between the partners in the proportions following; that is to say, two third parts thereof to the said M., and one third part thereof to the said N.; and all such instruments in writing for the purpose of getting in outstanding debts for releasing and indemnifying each other and generally in relation to the winding up of the partnership as are necessary or proper shall be executed by the partners.

Winding
up on
death of a
partner.

23. In the event of the death of either partner a like account, as is directed in Article No. 22 as between the partners, shall within six calendar months after his death be taken between the surviving partner and the executors and administrators of the deceased partner; and if the surviving partner shall be desirous of purchasing the share of the deceased partner in the stock in trade credits and effects of the partnership (but as to the share of the said M. in the event of his death subject to the provisions hereinafter contained in favour of a son of the said M.), the amount to be paid for such share shall be ascertained by the valuation of two indifferent persons, one to be appointed by the executors or administrators of the deceased partner, and the other by the surviving partner, or of an umpire to be appointed by the valuers before they proceed to the valuation. And thereupon the surviving partner shall become the purchaser of the said share at such valuation, and he shall be at liberty to pay the amount of such valuation in not more than three equal instalments at the expiration of six twelve and eighteen calendar months respectively from the death of the deceased partner, on entering into a bond in a sufficient penalty to the executors or administrators of the deceased partner for securing to them the payment of such instalments respectively with interest at the rate of £5 per cent. per annum from the death of the deceased partner, and also a bond in a sufficient penalty for indemnifying the estate and effects of the deceased partner against the

debts and liabilities of the partnership; and the executors or administrators of the deceased partner shall execute a proper assignment or assurance for vesting the share of the deceased partner in the surviving partner and for enabling him to get in all the credits and effects due or belonging to the partnership. But if the surviving partner shall not be desirous of purchasing the share of the deceased partner, then the provisions contained in Article No. 22 for a division of the capital and other effects of the partnership between the partners shall be applicable as between the surviving partner and the executors or administrators of the deceased partner.

24. It shall be lawful for the said M. at any time or times during his life or by his will to assign or make over the whole or any part of his share in the partnership to any one son of his who shall have attained the age of twenty-one years; and thereupon such son shall become a partner to the extent of the share or part so assigned to him upon the like terms and subject to the like conditions and provisions as are herein contained, or as near thereto as the case will admit: And such son shall execute a proper deed or instrument in writing covenanting to observe and perform the said conditions and provisions. And in the event of the death of the said M. such son shall have the option of purchasing the remaining interest if any of the said M. in the partnership, and thereupon such son shall succeed to the position of the said M. in the partnership, and shall become the senior partner of the firm. Save as aforesaid neither partner shall without the previous consent in writing of the other partner assign his share or interest in the partnership.

Power to
senior
partner to
introduce
a son.

25. If any doubt question or dispute shall arise between the partners, or between one of them and the executors or administrators of the other, or between their respective executors or administrators, either on the construction of these presents or in regard to any matter in any way relating to the partnership, such doubt question or dispute shall be referred to the arbitration of two indifferent

Arbitra-
tion.

persons, one to be appointed by each party, and in case such arbitrators cannot agree then such doubt question or dispute shall be referred to an umpire to be appointed by the arbitrators before they proceed to the arbitration. And if either party shall neglect to appoint an arbitrator, or to give notice of his appointment to the other party, for the space of fourteen days after notice in writing shall have been given to him by the other party so to do, or if the arbitrator appointed by either party shall neglect to act, then the arbitrator appointed by the other party shall make his decision alone and such decision shall be final and binding upon both parties. And the provisions as to arbitration contained in "The Common Law Procedure Act, 1854" shall be applicable, so far as the same are not inconsistent with the provisions hereinbefore contained.

IN WITNESS &c.

LXXVI.

BOND *by* SURVIVING PARTNER *to secure payment to*
EXECUTORS *of* DECEASED PARTNER *of* INSTALMENTS
of PURCHASE MONEY *for share of deceased partner,*
and to INDEMNIFY such executors.

KNOW ALL MEN by these presents that I M. of &c. am held and bound to B. of &c. and C. of &c. in the sum of £ ——— (*twice the amount of principal sum to be secured*), to be paid to the said B. and C. (*u*) or the persons claiming under them for which payment I bind myself (*v*) by these presents. SEALED with my seal. DATED this ——— day of ———.

Recital of
partner-
ship.

Death of
one part-
ner.

WHEREAS the said M. and N. late of &c. deceased carried on the trade or business of ——— as copartners under the firm of ——— and Co. under a certain deed or articles of partnership dated &c. AND WHEREAS the said N. died on the ——— day of ———, having by his

(*u*) See Conveyancing Act, 1881,
s. 60, p. 299,

(*v*) See same Act, s. 59, p. 298

last will dated &c. appointed the said B. and C. his executors, and they have since on the ——— day of ——— duly proved the said will in the ——— Registry of the Probate Division of the High Court of Justice, AND ^{Valuation of his interest.} WHEREAS in pursuance of the provisions in the said deed or articles of partnership contained for the sale to the surviving partner of the share of a deceased partner in the capital and effects of the partnership, the said M. has elected to purchase the share of the said N., which share has in accordance with the same provisions been ascertained to be of the value of £ ———, AND WHEREAS in ^{Election to pay by instalments.} accordance with the same provisions the said M. has elected to pay the said sum of £ ——— with interest in three instalments in manner hereinafter mentioned, and accordingly the said M. hath executed the above-written bond, NOW THE CONDITION of the above-written bond is such that if the said M. shall pay to the said B. and C. or the persons claiming under them the sum of £ ——— by three instalments at the times following; ^{Instalments.} that is to say, the sum of £ ——— on the ——— day of ——— (*six months from the death of N.*), the sum of £ ——— on the ——— day of ——— (*twelve months from the death of N.*), and the sum of £ ——— on the ——— day of ——— (*eighteen months from the death of N.*), and shall together with each instalment pay interest at the rate of £5 per cent. per annum on the said sum of £ ——— or on so much thereof as shall for the time being remain unpaid, such interest to be computed from the day of the death of the said N., And shall at all times hereafter ^{Indemnity.} keep indemnified the said B. and C. their heirs executors administrators and assigns and also the estate and effects of the said N. deceased against all debts and liabilities claims and demands whatsoever in respect of the said partnership, THEN the above-written bond or obligation shall be void and of no effect, otherwise the same shall be and remain in full force and virtue.

LXXVII.

SETTLEMENT *in contemplation of* MARRIAGE (x) *of* WIFE'S PERSONAL ESTATE *in* POSSESSION *and* REVERSION *upon* TRUST *for* wife *for* life, *then* *for* husband *for* life *or* *until* bankruptcy, *then* *for* children *according* *to* appointment, *or* *equally* : *in* default *of* children, *for* wife's appointees, *or* *for* her, *or* her next *of* kin *excluding* husband. POWER *to* WIFE *to* appoint life interest *to* future husband, *and* proportion *of* capital *to* children *of* future marriage. AGREEMENT *to* settle AFTER-ACQUIRED PROPERTY *of* the wife. SETTLEMENT *by* intended HUSBAND *of* POLICY *of* assurance *on* his life.

THIS INDENTURE made the ——— day of ———
Between H. of &c. (*intended husband*) of the 1st part

(x) The Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, which commences with the 1st January, 1883, is not intended materially to affect the usual forms of marriage settlements, but rather to supply a sort of parliamentary settlement for those women who do not themselves make settlements on their marriage. It enacts—

s. 1. (1). A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

(2). A married woman shall be capable of entering into and

rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3). Every contract entered into

W. of &c. (*intended wife*) spinster of the 2nd part and B. of &c. C. of &c. and D. of &c. (*trustees*) of the 3rd part,

by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4). Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5). Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

s. 2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

s. 4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

s. 5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

s. 18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole.

s. 19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement,

Marriage
agreed
upon.
Statement
of wife's
property.

Agree-
ment for
settle-
ment.

WHEREAS a marriage has been agreed upon and is intended shortly to be solemnized between the said H. and the said W., AND WHEREAS the said W. is entitled in possession to the sum of £ ——— Consolidated £3 per cent. Annuities, And she is also under the will of her grandfather J. S. deceased entitled in reversion expectant upon the death of her mother ——— to one third part or share of the residuary personal estate of the said J. S., which residuary personal estate now consists of the particulars specified in the schedule hereto, AND WHEREAS in contemplation of the said intended marriage it has been agreed that the said sum of £ ——— Consolidated Annuities and the said reversionary share of the said W. in the residuary estate of the said J. S. and also all such other property if any of the

will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

s. 22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong or other matter or thing whatsoever,

for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

s. 23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

s. 24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

said W. as is hereinafter mentioned shall be settled in manner hereinafter appearing, And that the said H. shall effect a policy of assurance on his life in the sum of £ ——— and shall settle the same in manner hereinafter appearing, AND WHEREAS the said H. has accordingly effected an assurance on his life with the ——— Assurance Society for the sum of £ ——— by a policy dated &c. and numbered ——— under the annual premium of £ ———, AND WHEREAS the said sum of £ ——— Consolidated Annuities has been transferred into the joint names of the said B. C. and D., NOW THIS INDENTURE WITNESSETH that in consideration of the said intended marriage the said W. as settlor with the consent of the said H. doth hereby assign unto the said B. C. and D. their executors administrators and assigns ALL that the one third part or other the share and interest to which the said W. is entitled in reversion expectant upon the death of her mother as aforesaid of and in the residuary personal estate of the said J. S. and the stocks funds and securities in or upon which the same shall for the time being be invested, with full power to give receipts and discharges for the same, TO HAVE AND TO HOLD the part or share and premises hereinbefore assigned UNTO the said B. C. and D. their executors administrators and assigns UPON TRUST that the said B. C. and D. or other the trustees or trustee for the time being of these presents shall so soon as practicable after the death of the said (*mother*) call in and obtain transfer or payment to themselves or himself of the said share and premises, and shall stand possessed thereof upon the trusts and with and subject to the powers provisions and agreements hereinafter declared of and concerning the same. AND IT IS HEREBY AGREED AND DECLARED that the trustees or trustee shall stand possessed of the said sum of £ ——— Consolidated Annuities so transferred into their names as aforesaid, and of the said share in the residuary estate of the said J. S. when the same shall have been received by them, which said sum of Consolidated Annuities and share in the

Policy on husband's life.

Transfer of consols to trustees.

Assignment of wife's reversionary property to trustees.

Trusts of wife's property.

residuary estate of the said J. S. are hereinafter called the wife's property (y), IN TRUST for the said W. until the solemnization of the said intended marriage, And from and after the solemnization thereof IN TRUST to pay the annual income thereof unto the said W. during her life for her sole and separate use free from the debts and control of the said H. and of any other husband whom she may marry and so that she shall not have power to dispose of the same by anticipation (z) and her receipts alone shall be good discharges, And after her decease IN TRUST to pay the annual income thereof unto the said H. if he shall be then living during his life unless and until he shall either during the life of the said W. or after her death have become bankrupt or shall have assigned charged or incumbered the said income or any part thereof or shall have done or suffered anything whereby the said income or any part thereof if payable to him absolutely would become payable to any other person or persons, And subject to the trusts aforesaid IN TRUST for all or such one or more exclusively of the other or others of the children of the said intended marriage and their issue (such issue to be born during the lives of the said H. and W. or the life of the survivor of them, or within twenty-one years from the death of such survivor), at such age or ages, time or times, in such shares if more than one, with such provisions for maintenance education and advancement, upon such conditions, and generally in such manner as the said H. and W. shall by any deed or deeds with or without power of revocation and new appointment jointly appoint, And in default of and sub-

wife for life,

husband for life or till bankruptcy,

children according to appointment by husband and wife,

or by survivor.

(y) The direction to the trustees to convert the property into money and invest upon authorised investments and to stand possessed thereof In trust &c., is sometimes inserted at this place. Where, however, no change of investments is necessarily contemplated, it seems more convenient to insert the power to invest with the other powers given to the trustees, see *Prec. LXXX.*, and

note (s), p. 170.

(z) Under the Married Women's Property Act, 1882, s. 19, see p. 149, it seems that the restraint upon anticipation will be somewhat weakened if it is not to have any greater force against the woman's creditors than a like restraint in the case of a man against his creditors. See also *Conveyancing Act, 1881, s. 39, p. 286.*

ject to any such appointment as the survivor of the said H. and W. shall by any deed or deeds with or without power of revocation and new appointment or by will or codicil appoint, And in default of and subject to any such appointment IN TRUST for all the children of the said intended marriage who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under it with the consent of her or their parents or parent or guardians or guardian for the time being in equal shares, and if there shall be but one such child then the whole to be in trust for such child. PROVIDED nevertheless that no child who or any of whose issue shall take any part of the wife's property under any such appointment as aforesaid shall be entitled to any share in the unappointed part of the same property without bringing the part or parts so appointed into hotchpot and accounting for the same accordingly, unless the said H. and W. or the survivor of them shall on making such appointment declare the contrary. [PROVIDED ALWAYS (a) and it is hereby agreed and declared that the trustees or trustee may (but subject to the interest taken by the said W. or the said H. respectively for life or otherwise under the aforesaid trusts) apply for or towards the maintenance and education of any child of the said intended marriage for the time being presumptively entitled to a share under the trusts aforesaid until the same share shall become vested or payable such yearly sums of money not exceeding the amount of the annual income of the same share as the trustees or trustee shall think fit, or may in their discretion pay such sums to the guardian or guardians for the time being of such child for the purposes aforesaid without being bound to see to the application thereof, And shall from time to time invest the surplus annual income

Subject to appointment, in trust for children equally.

Hotchpot clause.

Maintenance.

(a) It is sometimes convenient for the trustees to have this clause inserted in the settlement although the Conveyancing Act, 1881, s. 43,

provides that the trustees may apply the income of an infant's property towards his maintenance; see p. 289.

Advance-
ment.

If no
children,

for ap-
pointees of
wife,

or for wife
if she sur-
vive hus-
band,

if she do
not sur-
vive then
according
to statutes,
excluding
husband.

of every such share and accumulate the same for the benefit of such person or persons as under the trusts hereof shall become absolutely entitled to the same share ; But the trustees or trustee may at any time apply the accumulations of a preceding year or years for or towards the maintenance and education of any child for the time being presumptively entitled thereto] : AND ALSO that the trustees or trustee may at any time or times, after the death of the said H. and W., or during the lives of the said H. and W. and the life of the survivor of them with their his or her consent in writing, raise any part or parts not exceeding in the whole one half part of the expectant share of any child, and may either pay the same to such child or otherwise apply the same for his or her advancement preferment or benefit in such manner as the said trustees or trustee shall think fit. AND IT IS HEREBY AGREED AND DECLARED that if there shall be no child or issue of the said intended marriage who under the aforesaid trusts shall become absolutely entitled to the wife's property then and in such case the trustees or trustee shall subject to the aforesaid trusts hold the same property IN TRUST for such person or persons and generally in such manner as the said W. shall whether covert or sole by will or codicil appoint, And in default of and subject to such appointment IN TRUST if the said W. shall survive the said H. for the said W. her executors administrators and assigns, But if she shall die in the lifetime of the said H. then IN TRUST for such person or persons as under the statutes for the distribution of the effects of intestates would on the decease of the said W. have become entitled thereto if she had died possessed thereof intestate and without having been married, such persons if more than one to take as tenants in common in the shares in which they would in that event have taken under the same statutes (b). PROVIDED ALWAYS and it is hereby agreed and

(b) There does not seem to be anything in the Married Women's Property Act, 1882, which renders these trusts unnecessary, or inappropriate.

declared that if there shall be any issue of the said now intended marriage and the said W. shall survive the said H. and marry again, it shall be lawful for the said W. at any time or times either before or after any subsequent marriage by any deed or deeds with or without power of revocation and new appointment or by will or codicil to appoint (c) that any part or parts of the wife's property not exceeding the proportion following, that is to say, if there shall be one child only of the now intended marriage who being a son shall attain the age of twenty-one years or being a daughter shall attain that age or marry under it with such consent as aforesaid then not exceeding two third parts, if there shall be two or more such children then not exceeding one half part, shall from and after the decease of the said W. go and be held In trust as to the whole or any portion of the part or parts so appointed for any husband who may survive her during his life or for any less period, and subject to any interest so appointed to any husband In trust for all or any one or more exclusively of the other or others of the children and issue of any subsequent marriage or marriages of the said W.

Power to wife to appoint proportion of property to future husband for life, and to children of future marriages.

(c) An alternative form is to give the wife power "to appoint that any part or parts of the wife's property, not bearing a greater proportion to the residue of the wife's property than the number of children of such subsequent marriage or marriages who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry shall bear to the number of children of the now intended marriage who being a son or sons &c., shall from and after the decease of the said W. go and be held &c. (In trust for husband and children and issue as above, adding instead of the provisions limiting the total amount the following provision), PROVIDED

ALWAYS that the said W. may exercise the last-mentioned powers of appointment in favour of an after-taken husband and the children and issue of any subsequent marriage or marriages so often as she may marry, and while it shall be uncertain to what part of the wife's property such powers may eventually extend &c." as above. This form is somewhat simpler, but it postpones indefinitely the period at which the shares of the wife's property taken by the children of the first marriage are ascertained, and is a form which the first husband would be likely to disapprove as it might result in nearly all the wife's property being taken away from his child or children.

Proviso
limiting
total
amount
taken by
children of
future
marriages.

Appoint-
ment to
take effect
according
to the
event.

Agree-
ment to
settle
other and

(such issue to be born in the lifetime of the said W. or within twenty-one years from her death), at such age or ages time or times not being earlier as to a son than his attaining the age of twenty-one years or as to a daughter than her attaining that age or marrying, in such shares if more than one, with such provisions for maintenance education and advancement in the meantime, upon such conditions, and generally in such manner as the said W. shall by such appointment declare. PROVIDED ALWAYS that the said W. may exercise the last-mentioned powers of appointment in favour of any after-taken husband and the children and issue of any subsequent marriage or marriages so often as she may marry, but the part or parts of the wife's property taken collectively by all the children and issue of any subsequent marriage or marriages shall not bear a greater proportion to the part of the wife's property taken collectively by the children and issue of the now intended marriage than the number of the children of such subsequent marriage or marriages who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry shall bear to the number of children of the now intended marriage who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry; PROVIDED ALSO that the said W. may exercise the last-mentioned powers of appointment while it shall be uncertain to what part of the wife's property such powers may eventually extend, and such appointments shall take effect according to the event, and so far as any such appointments shall fail by reason of the provisions hereinbefore contained or otherwise the property included in such appointments shall be held in trust for such person or persons as under the trusts hereinbefore contained of the wife's property would have been entitled thereto if such last-mentioned powers of appointment had not been exercised. AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage It is hereby agreed and

declared (d) that all the real and personal property if ^{after-ac-} any not hereinbefore settled, to which the said W. at the ^{quired pro-} time of the said intended marriage, or to which she or ^{erty of} the said H. in her right at any time during her now in- ^{wife.} tended coverture may be or become entitled (d) whether in possession or reversion at one time and from one source of the value of £200 or upwards (except jewels trinkets ornaments of the person plate linen china furniture pictures books and articles of the like nature) shall so soon as circumstances will admit and at the cost of the trust estate be assured and transferred by the said H. and W. respectively and all other necessary parties any unto or otherwise vested in the trustees or trustee, UPON TRUST that the trustees or trustee shall at such time or times and in such manner as they or he shall think fit (but as to reversionary property not until it shall fall into possession) sell or call in and convert into money such part or parts of the said property as shall not consist of money or of the investments hereinafter authorised, and shall stand possessed of the money to arise from such sale calling in and conversion and of such part or parts of the said property as shall consist of money or of the investments hereinafter authorised upon the trusts and with and subject to the powers and provisions herein declared and contained concerning the wife's property. PROVIDED ALWAYS that if any property falling within the agreement lastly hereinbefore contained shall consist of an annuity or of the rents or income of any real or personal property to which the said W. shall be entitled during her life or for any term or period determinable on her death the same shall not be sold except with the previous consent in writing of the said W., but the same annuity rents and income shall unless and until the same shall be sold be paid and applied to the persons and in the manner to whom and in which the income of the

(d) Under the Married Women's Property Act, 1882, s. 2, see p. 149, for her separate use unless brought into the settlement as above provided.

wife's property shall for the time being be payable or
 applicable under the trusts of these presents. AND
 Settlement by husband of policy. THIS INDENTURE ALSO WITNESSETH that in
 consideration of the said intended marriage the said H.
 as settlor doth hereby assign unto the said B. C. and D.
 their executors administrators and assigns ALL that the
 aforesaid policy of assurance and the sum of £ ———
 thereby assured, and all other moneys to become payable
 thereunder by way of bonus or otherwise, with full power
 to give effectual receipts and discharges for the same,
 To HAVE AND TO HOLD the policy and premises hereby
 lastly assigned UNTO the said B. C. and D. their executors
 administrators and assigns UPON TRUST that the trustees
 or trustee shall upon the death of the said H. receive the
 moneys to become payable thereunder, and shall out of such
 moneys in the first place pay the expenses of and in-
 Trusts: cidental to the obtaining payment thereof, and shall stand
 possessed of the residue of such moneys IN TRUST to
 pay the income thereof unto the said W. if she shall be
 wife for life or until second marriage, then living during her life or until she shall marry again,
 and from and after her death or second marriage UPON
 THE LIKE TRUSTS and with and subject to the like powers
 children. and provisions for the benefit of the children and issue
 of the now intended marriage as are hereinbefore declared
 and contained concerning the wife's property or such of
 the same trusts powers and provisions as shall be then
 subsisting and capable of taking effect. And if there
 If no children, shall be no child or issue of the now intended marri-
 age who under the trusts aforesaid shall become absolutely
 entitled to the moneys payable under the said policy,
 then and in such case the trustees or trustee shall, subject
 to the aforesaid trusts, hold the same moneys and the stocks
 funds and securities upon which the same may be invested
 for husband. IN TRUST for the said H. his executors administrators
 and assigns. (*Covenant by H. to keep up the policy,*
 Trustees may keep up policy, see p. 94, *mutatis mutandis*). PROVIDED ALWAYS and
 it is hereby agreed and declared that it shall be lawful
 for the trustees or trustee at their or his discretion at any

time or times to apply the income of any part of the wife's property or any part of the capital thereof in or towards the payment of any premiums or sums of money which may be required for keeping on foot the said policy hereby assigned or for effecting or keeping on foot any such new policy or policies as aforesaid by reason of the breach of the aforesaid covenant in that behalf on the part of the said H.; But it shall not be obligatory on the trustees or trustee so to do or to enforce the performance of any of the aforesaid covenants on the part of the said H. in reference to the said policy, nor shall it be considered a breach of trust for the trustees or trustee to permit the said covenants to remain unperformed, or to permit the said policy or any such policies as aforesaid to become void through any means whatsoever. **AND IT IS HEREBY** Investment clause. **DECLARED** that the trustees or trustee may leave any funds for the time being subject to the trusts of these presents upon the security or securities in which the same may be invested without being bound to see to the sufficiency of the said securities or being responsible for any loss that may arise from their insufficiency: And that they and he may sell call in or convert into money at any time or times all or any of the funds and securities for the time being subject to the trusts of these presents, and may invest the money arising therefrom and all principal money coming to their or his hands by virtue of these presents in their or his names or name in the Public Stocks or Funds of Great Britain or upon any securities guaranteed by the Government of Great Britain or of India [or of any British Colony or of the United States of America] or upon Stock of the Bank of England or in the shares stocks bonds or debentures of any railway company or other public company in the United Kingdom or in India [or in any Colony or dependency of the United Kingdom or in any foreign country] or upon mortgage of any messuages lands or hereditaments in England or Wales but not in Ireland being freehold or copyhold of inheritance or held upon any lease or leases perpetually renewable or for any term or terms of years of

which not less than sixty years shall be unexpired: And from time to time may vary all or any of such securities: PROVIDED ALWAYS that the aforesaid several powers relating to investments shall not be exercised during the lives of the said H. and W. and the life of the survivor of them without their his or her previous consent in writing.

Power to
apportion
on divid-
ing.

AND IT IS HEREBY DECLARED that it shall be lawful for the trustees or trustee on dividing the funds and securities for the time being subject to the trusts hereof to apportion the same between the persons beneficially interested therein as the trustees or trustee may deem equal or as nearly equal as may be, and that it shall not be necessary for the purposes of such division to convert all the said funds and securities into money, or to assign to or retain for each person interested therein either absolutely or presumptively a part of each specific fund or security: And in particular (e) with respect to the share of the said W. in the residuary personal estate of the said J. S. the trustees or trustee shall be responsible only for such portion thereof

Trustees
not respon-
sible for

(e) It is often advisable to insert this provision for the protection of trustees where the trust property is outstanding, as in the case of a reversionary interest. Where the property is handed over to the trustees at once such a provision is unnecessary. See Lord St. Leonards' Act, 22 & 23 Vict. c. 35, which enacts, s. 31, "Every deed, will, or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following; that is to say, 'That the trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively receive notwithstanding their re-

spectively signing any receipts for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument.'"

as shall actually come into their hands, and shall not be in anywise bound to see to the safety thereof whilst outstanding, and shall not although the same may be payable or transferable to them or him under the trusts hereinbefore contained be bound to get in or obtain payment or transfer thereof unless they or he shall be required so to do in any specific case in writing by some person beneficially interested therein: And no omission or neglect in that behalf except when so required as aforesaid shall be considered a breach of trust or render the trustees or trustee in anywise liable for any loss thereby occasioned.

AND IT IS HEREBY AGREED AND DECLARED that the said H. and W. or the survivor of them shall have the power of appointing new trustees of these presents (f). AND IT IS HEREBY AGREED AND DECLARED that the said D. and any future trustee who may be a solicitor shall be entitled to charge and shall be paid out of the property hereby settled for all business done by him in relation to the trusts of these presents in the same manner as if he had not been a trustee. IN WITNESS &c. (g).

outstanding property.

Appointment of new trustees.

Trustee being solicitor may make charges.

(f) See Conveyancing Act, 1881, ss. 31, 33, 34, p. 280. The following Acts also apply to the appointment of new trustees:—

Trustee Extension Act, 1852, 15 & 16 Vict. c. 55, enacts, s. 9, "That in all cases where it shall be expedient to appoint a new trustee, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or not at the time of making such order."

Trustee Act, 1850, 13 & 14 Vict. c. 60, enacts, s. 34, "That it shall be lawful for the said Court of Chancery, upon making any order for appointing a new trustee or new

trustees, either by the same or by any subsequent order to direct that any lands subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees for such estate as the Court shall direct."

s. 35 enacts that the said Court may in like manner "vest the right to call for a transfer of any stock subject to the trust, or to receive the dividends or income thereof, or to sue for or recover any chose in action, subject to the trust, or any interest in respect thereof in the person or persons who upon the appointment shall be the trustee or trustees."

(g) Notice of this settlement must be given to the trustees of the will of J. S. and to the insurance office.

LXXVIII.

SETTLEMENT *in contemplation of* MARRIAGE (h) of PERSONAL ESTATE *in* POSSESSION and REVERSION *belonging to intended* HUSBAND *upon* TRUST *for him for life then for wife during widowhood, then for children according to appointment or equally.* And AGREEMENT to SETTLE PERSONAL ESTATE *in* POSSESSION and REVERSION *belonging to intended* WIFE *who is an* INFANT (i) *upon* TRUST *for her for life then for husband during his life then for children.* In default of children husband's property to go to him, wife's property to her appointees or to her or her next of kin excluding husband.

THIS INDENTURE made the ——— day of ———
Between H. of &c. (*intended husband*) of the 1st part W.
of &c. (*intended wife*) spinster an infant under the age of
twenty-one years of the 2nd part and B. of &c. C. of &c. and
D. of &c. (*trustees*) of the 3rd part, WHEREAS a marriage
has been agreed upon and is intended shortly to be solemnized between the said H. and the said W., AND WHEREAS
&c. (*recite title of H. to the sum of £—— secured*

Marriage
agreed
upon.

Statement
of hus-

(h) See note (x), p. 148.

(i) Infants' Settlement Act, 18 & 19 Vict. c. 43 (2nd July, 1855), which applies to males under 20 and females under 17 years of age, enacts, s. 1, "From and after the passing of this Act it shall be lawful for every infant upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement or contract for a settlement of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder or expectancy," &c.

In most cases, however, the settlement made by an infant wife without the assistance of the Court is considered sufficiently binding. It binds the husband; and though the wife is not bound as to reversionary property which falls into possession after the death of the husband, she will not be permitted to repudiate the settlement except upon giving up any benefit she may take in property brought into the settlement by the husband, see *Codrington v. Lindsay*, L. R. 8 Ch. 578, affirmed 7 H. L. 854. If thought desirable a post-nuptial settlement may be executed when the wife comes of age.

upon mortgage and also under the will of J. S. to one band's
fifth part of the stocks funds and securities mentioned in property.
the first schedule hereto subject to the life interest therein
of his father and mother), AND WHEREAS the said W. will Statement
on her marriage become entitled in possession to the sum of wife's
of £—— Consolidated £3 per cent. Annuities, AND property.
WHEREAS under an Indenture dated &c. and made &c.
(being the settlement made in contemplation of the
marriage of —— and —— the parents of the said
W.) and a deed poll under the hands and seals of her
said parents bearing even date with and intended to be
executed immediately before these presents the said W.
will on her marriage become entitled in reversion expectant
upon the death of the survivor of her said parents to one
third part or share in the stocks funds and securities
subject to the trusts of the aforesaid Indenture of the
—— day of ——, which stocks funds and securities
now consist of the particulars specified in the second
schedule hereto, AND WHEREAS in contemplation of the Agree-
now intended marriage it has been agreed that the afore- ment for
said sum of £—— secured upon mortgage as aforesaid settle-
and the said reversionary share of the said H. in the said ment.
stocks funds and securities subject to the trusts of the
will of the said J. S. shall be settled in manner hereinafter
appearing, And also that the said sum of £—— Con-
solidated £3 per cent. Annuities and the said reversionary
share of the said W. in the said stocks funds and securities
subject to the trusts of the aforesaid Indenture of the
—— day of —— and also all such other property if
any of the said W. as is hereinafter mentioned shall be
settled in manner hereinafter appearing, AND WHEREAS Transfer
the said H. has by an Indenture (k) bearing even date of mort-
with and intended to be executed immediately before gage by
these presents transferred the said sum of £—— and deed of
interest and the securities for the same unto the said B. even date.

(k) The mortgage should be transferred by a separate deed, containing as to avoid bringing the trusts upon the title to the mortgaged property, see Prec. CIII., p. 232.

Assign-
ment by
husband of
his rever-
sionary
property.

Agree-
ment to
transfer
wife's pro-
perty to
trustees.

C. and D. as therein mentioned, NOW THIS INDENTURE WITNESSETH that in consideration of the said intended marriage the said H. as settlor with the consent of the said W. doth hereby assign unto the said B. C. and D. their executors administrators and assigns ALL that the one fifth part or other the share and interest to which the said H. is entitled in reversion expectant upon the death of his parents as aforesaid of and in the stocks funds and securities subject to the trusts of the will of the said J. S., with full power to give receipts and discharges for the same, TO HAVE AND TO HOLD the part or share and premises hereinbefore assigned UNTO the said B. C. and D. their executors administrators and assigns UPON TRUST that the said B. C. and D. or other the trustee or trustees for the time being of these presents shall so soon as practicable after the decease of the survivor of the said parents of the said H. call in and obtain transfer or payment to themselves or himself of the said share and premises, And shall stand possessed thereof upon the trusts and with and subject to the powers provisions and agreements herein-after declared of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage It is hereby agreed and declared that in case the said intended marriage shall take place the said H. and the said W. and all other necessary parties shall so soon as the circumstances of the case will permit at the cost of the trust estate cause and procure the said sum of £—— Consolidated Annuities and also the said third part or other the share and interest to which the said W. will on her marriage become entitled as aforesaid of and in the stocks funds and securities subject to the trusts of the aforesaid Indenture of the —— day of —— to be respectively transferred and paid to or vested in the trustees or trustee, UPON TRUST that the trustees or trustee shall so soon as practicable after the decease of the survivor of the said parents of the said W. call in and obtain transfer or payment to themselves or himself of the said share and interest of the said W. in the last-mentioned

stocks funds and securities. AND IT IS HEREBY AGREED *Trusts.*
 AND DECLARED that the trustees or trustee shall stand
 possessed of the said sum of £—— so secured upon
 mortgage as aforesaid and of the said share and interest of
 the said H. in the stocks funds and securities subject to
 the trusts of the will of the said J. S. when the same share
 shall have been received by them or him, which said sum
 of £—— and share of the said H. are hereinafter called
 the husband's property, And also of the said sum of
 £—— Consolidated Annuities when transferred into
 their or his names or name and of the said share and
 interest of the said W. in the stocks funds and securities
 subject to the trusts of the said Indenture of the ——
 day of —— when the same share shall have been
 received by them or him, which said sum of Consolidated
 Annuities and share of the said W. are hereinafter called
 the wife's property, upon the trusts following; that is to
 say, As to the husband's property IN TRUST for the said *As to
husband's
property,
for him
for life,*
 H. until the solemnization of the said intended marriage,
 And after the solemnization thereof IN TRUST to pay the
 income thereof unto the said H. and his assigns during his
 life, And after his decease IN TRUST to pay the income *then for
wife
during
widow-
hood.*
 thereof unto the said W. if she shall be then living during
 her life [unless and until she shall marry again]; And as
 to the wife's property IN TRUST to pay the income thereof *As to
wife's pro-
perty, for
her for life
for her
separate
use,*
 unto the said W. during her life for her sole and separate
 use free from the debts and control of the said H. and of
 any other husband whom she may marry and so that she
 shall not have power to dispose of the same by anticipa-
 tion and her receipts alone shall be good discharges, And
 after her decease IN TRUST to pay the income thereof unto *then for
husband
for life.*
 the said H. if he shall be then living during his life, And
 subject to the trusts aforesaid as to both the husband's *Subject as
aforesaid
as to both
properties,
In trust for
children.*
 property and the wife's property IN TRUST for all or such
 one or more exclusively of the other or others of the
 children of the said intended marriage and their issue &c.
*(set out trusts for children and issue, with hotchpot clause
and advancement clause, see p. 152).* AND IT IS HEREBY In default

of chil-
dren;

As to
husband's
property
in trust for
him,

As to
wife's prop-
erty, in
trust for
her ap-
pointees or
for her or
her next of
kin exclud-
ing hus-
band.

AGREED AND DECLARED that if there shall be no child or issue of the said intended marriage who under the trusts aforesaid shall become absolutely entitled to the property hereby settled then and in such case the trustees or trustee shall subject to the aforesaid trusts hold the husband's property and the stocks funds and securities for the time being representing the same IN TRUST for the said H. his executors administrators and assigns, And shall subject to the aforesaid trusts hold the wife's property and the stocks funds and securities for the time being representing the same IN TRUST &c. (*for appointees of W. or for her or her next of kin according to the statutes excluding H., see p. 154. Power to W. to appoint a proportion of her property to future husband and children of a future marriage, see p. 155. Agreement to settle other and after-acquired property of W., see p. 157. Investment clause, see p. 159. Power to apportion on dividing, see p. 160. Clause indemnifying trustees in respect of outstanding property, see p. 160. Clause for appointment of new trustees, see p. 161.*) IN WITNESS &c. (l).

LXXIX.

SETTLEMENT *in contemplation of* MARRIAGE (m) *by intended* HUSBAND *of a sum of* RAILWAY STOCK *and by intended* WIFE *of a sum of* CONSOLS. *Upon trust for husband for life, then for wife for life, then for children. COVENANT by* FATHER *of husband to pay* ANNUITY.

THIS INDENTURE made the ——— day of ——— Between H. of &c. (*husband*) of the 1st part W. of &c. (*wife*) of the 2nd part A. of &c. (*father*) of the 3rd part and B. of &c. and C. of &c. (*trustees*) of the 4th part, WHEREAS a marriage has been agreed upon and is intended shortly to be solemnized between the said H. and the said

Marriage
agreed
upon.

(l) Notice of this settlement must be given to the trustees of the will of J. S. and of the settlement made on the marriage of W.'s parents.
(m) See note, p. 148.

W., AND WHEREAS the said H. is absolutely entitled to the sum of £—— Ordinary Stock in the —— Railway Company, AND WHEREAS the said W. is absolutely entitled to the sum of £—— Consolidated £3 per cent. Annuities, AND WHEREAS in contemplation of the said intended marriage it has been agreed that the said several sums of £—— Railway Stock and £—— Consolidated Annuities shall be settled in manner hereinafter appearing, AND WHEREAS in pursuance of the said agreement the said sums of £—— Railway Stock and £—— Consolidated Annuities have been transferred into the joint names of the said B. and C., NOW THIS INDENTURE WITNESSETH that in consideration of the said intended marriage IT IS HEREBY AGREED AND DECLARED that the said B. and C. or other the trustees or trustee for the time being of these presents shall stand possessed of the aforesaid sums of £—— Railway Stock and £—— Consolidated Annuities, as to the said sum of £—— Railway Stock IN TRUST for the said H. until the solemnization of the said intended marriage, and as to the said sum of £—— Consolidated Annuities, IN TRUST for the said W. until the solemnization of the said intended marriage, And from and after the solemnization thereof as to both the aforesaid sums of Railway Stock and Consolidated Annuities IN TRUST to pay the income thereof to the said H. during his life, And after his decease to the said W. during her life, And after the decease of the survivor of the said H. and W. IN TRUST for all or such one or more exclusively of the other or others of the children of the said intended marriage and their issue &c. (*set out trusts for children and issue, with hotchpot clause and advancement clause, see p. 152*). AND IT IS HEREBY AGREED AND DECLARED that if there shall be no child or issue of the said intended marriage who under the aforesaid trusts shall become absolutely entitled to the property hereby settled then and in such case the trustees or trustee shall subject to the aforesaid trusts hold the said sum of £—— Railway Stock and the stocks funds and securi-

Husband's property.

Wife's property.

Agreement for settlement.

Transfer to trustees.

Trusts:

for husband for life, then for wife for life, then for children.

If no children

as to husband's property,

in trust
for him;
as to wife's
property.

Covenant
by father
to pay
annuity.

Annuity
to be
applied as
income of
husband's
property.

ties for the time being representing the same IN TRUST for the said H. his executors administrators and assigns, And shall subject to the aforesaid trusts hold the said sum of £ ——— Consolidated Annuities and the stocks funds and securities for the time being representing the same IN TRUST &c. (*for appointees of W. or for her or her next of kin according to the statutes excluding H. see p. 154*). AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage the said A. doth hereby covenant with the said B. and C. that in case the said intended marriage shall be solemnized he the said A. will during his life so long as the said H. and W. or either of them shall be living [*or unless and until H. shall be presented to a living or taken into a partnership &c.*] pay to the trustees or trustee the annual sum of £ ——— such sum to be paid half-yearly without any deduction whatsoever the first of such payments to be made at the expiration of six calendar months after the solemnization of the said intended marriage if the said A. shall be then living. AND IT IS HEREBY AGREED AND DECLARED that the said annual sum of £ ——— shall be paid and applied by the trustees or trustee to the person or persons and in the manner to whom and in which the income of the said sum of £ ——— Railway Stock (n) shall for the time being be payable or applicable under the trusts hereinbefore declared (o). (*Investment clause, see p. 159. Power to apportion on dividing the property, see p. 160*). AND

(n) Where reversionary property, which will fall into possession on the death of a father or mother, is settled, and the father or mother covenants to pay an annuity, such annuity will be directed to be applied in the same way as the income of the reversionary share would be applied if the same had fallen into possession.

(o) The Apportionment Act, 1870, 33 & 34 Vict. c. 35 (1st August 1870),

enacts, s. 2, "From and after the passing of this Act all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise), shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly."

IT IS HEREBY DECLARED that the said H. and W. or the survivor of them shall have the power of appointing new trustees of these presents. IN WITNESS &c.

Appoint-
ment of
new
trustees.

LXXX.

SETTLEMENT *in contemplation of* MARRIAGE *of* REAL ESTATE *of the intended* HUSBAND *upon trust for sale (p).*

THIS INDENTURE made the ——— day of ——— Between H. of &c. (*intended husband*) of the 1st part W. of &c. (*intended wife*) spinster of the 2nd part and B. of &c. and C. of &c. (*trustees*) of the 3rd part, WHEREAS a marriage has been agreed upon and is intended shortly to be solemnized between the said H. and the said W., AND WHEREAS the said H. is seised for an estate in fee simple in possession free from incumbrances of the freehold hereditaments hereinafter described and intended to be hereby granted which it has been agreed shall be settled in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in consideration of the said intended marriage, He the said H. as settlor doth hereby grant unto the said B. and C. and their heirs ALL &c. (*parcels*), To HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO AND TO THE USE of the said B. and C. their heirs and assigns IN TRUST for the said H. his heirs and assigns until the solemnization of the said intended marriage, And from and after the solemnization thereof, UPON TRUST that the said B. and C. or other the trustees or trustee for the time being of these presents shall at any time or times thereafter with the consent in writing of the said H. during his life and after

Marriage
agreed
upon.

Title of
husband
to real
estate.

Grant of
freeholds.

Upon trust
to sell.

(p) Such a settlement as this used to be made by two deeds, one conveying the property to trustees upon trust to sell and stand possessed of the proceeds of sale upon the trusts declared by the second deed. For

the reasons given under s. 63 of the Settled Land Act, 1882, p. 372, it seems on the whole better for the future to make the settlement by one deed.

his death with the consent in writing of the said W. during her life (q) and after the death of the survivor at the discretion of the trustees or trustee sell the said hereditaments and premises (r), and shall out of the proceeds of sale pay and retain all the costs and expenses of such sale and shall with such consent or at such discretion as aforesaid invest the residue of such proceeds of sale in their or his names or name in the Public Stocks &c. *see* p. 159 (s), with power from time to time to vary all or any of such securities. AND IT IS HEREBY AGREED

Trusts of
proceeds of
sale.

AND DECLARED that the trustees or trustee shall stand possessed of the residue of such proceeds of sale and of the stocks funds and securities upon which the same shall

Husband
for life.

be invested upon the trusts following, that is to say: In trust to pay the income thereof to the said H. during his

Wife for
life.

life, And after his decease to the said W. during her life, And after the decease of the survivor of the said H. and

Children.

W. IN TRUST for all or such one or more exclusively of the other or others of the children of the said intended marriage and their issue &c. (*set out trusts for children and issue, with hotchpot clause and clause for advancement, see* p. 152, and *power to apportion, see* p. 160). AND

In default
of children
for hus-
band.

IT IS HEREBY AGREED AND DECLARED that if there shall be no child or issue of the said intended marriage who under the aforesaid trusts shall become absolutely entitled to the property hereby settled then and in such case the trustees or trustee shall subject to the aforesaid trusts hold the said proceeds of sale and the stocks funds and securities for the time being representing the same IN TRUST for the

(q) If a life interest in the income until sale is given to the wife after the death of the husband, it would seem that she would then be a tenant for life within the meaning of the Settled Land Act, 1882, *see* s. 63, and consequently that she could sell and her consent to a sale after the death of her husband would be necessary under s. 56, subs. 2, p. 368.

(r) Power to sell by auction, &c.,

is given by the Conveyancing Act, 1881, s. 35; *see* p. 284.

(s) Where the settlement provides for a sale of the property settled it is more convenient to have the trust for reinvestment in securities immediately following the direction for sale. *Secus* where the property settled is already in stocks and securities, *see* note (y), p. 152.

said H. his executors administrators and assigns. **PRO-** Proviso that husband may remain in possession during his life.
VIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the said H. during his life to remain in possession or in receipt of the rents and profits of the said hereditaments and premises or such part thereof as shall remain unsold as if he were legal tenant for life thereof without impeachment of waste, and until the sale of the said hereditaments and premises the rents and profits thereof or of such part thereof as shall remain unsold shall after payment of all rates and taxes expenses of management and other outgoings be paid and applied to the person or persons to whom and in the manner in which the income of the proceeds of sale thereof would for the time being be payable or applicable under the trusts aforesaid. **AND IT IS HEREBY DECLARED** that until the sale of the said hereditaments and premises it shall be lawful for the trustees or trustee with such consent or at such discretion as aforesaid to lease the whole or any part or parts thereof remaining unsold for any term of years not exceeding twenty-one years to take effect in possession or within six calendar months from the date of the lease at the best yearly rent or rents that can be reasonably obtained without taking anything in the nature of a fine or premium and so that there be contained in every such lease a condition of re-entry for non-payment of rent and so that the lessee execute a counterpart of such lease and thereby covenant for the due payment of the rent. **AND IT IS HEREBY DECLARED** that the said Power of leasing
H. during his life and after his death the said W. during her life shall have the power of appointing new trustees Appointment of new trustees. of these presents, And the said B. and C. or other the trustees or trustee for the time being of these presents shall be the trustees thereof for the purposes of the Conveyancing Acts, 1881, 1882, and of the Settled Land Act, 1882, and for all other purposes (t). **IN WITNESS &c.**

(t) See notes to Conveyancing Act, Land Act, 1882, s. 2, subs. 8, p. 330. 1881, s. 42, p. 287, and to Settled

LXXXI.

SETTLEMENT *in contemplation of* MARRIAGE of LEASEHOLD
PROPERTY *of the intended WIFE (u).*Marriage
agreed
upon.Title to
leaseholds.
Agree-
ment to
settle.Assign-
ment of
leaseholds.

Trusts.

Wife for
life.

THIS INDENTURE made the ——— day of ———
Between W. of &c. widow (*intended wife*) of the 1st
part H. of &c. (*intended husband*) of the 2nd part and B.
of &c. and C. of &c. (*trustees*) of the 3rd part, WHEREAS a
marriage has been agreed upon and is intended shortly
to be solemnized between the said H. and the said W.,
AND WHEREAS by an Indenture dated &c. (*recite W.'s
title to the leaseholds, see p. 16*), AND WHEREAS in con-
templation of the said intended marriage it has been
agreed that the said leasehold hereditaments and premises
shall be settled in manner hereinafter appearing, NOW
THIS INDENTURE WITNESSETH that in considera-
tion of the said intended marriage She the said W. as
settlor doth hereby assign Unto the said B. and C. their
executors administrators and assigns ALL that dwelling-
house and premises comprised in and demised by the
aforesaid Indenture of Lease of the ——— day of ———,
To HAVE AND TO HOLD the dwelling-house and premises
hereby assigned UNTO the said B. and C. their executors
administrators and assigns, IN TRUST for the said W. her
executors administrators and assigns until the solemniza-
tion of the said intended marriage and from and after the
solemnization thereof UPON TRUST by and out of the rents
and profits of the said dwelling-house and premises to pay
the rents reserved by the said Indenture of Lease and
observe and perform the covenants therein contained and
on the part of the lessee to be observed and performed
and subject thereto IN TRUST to pay the said rents and
profits of the said dwelling-house and premises to the said

(u) See note (p) to *Proc. LXXX.*, p. 169.

W. during her life for her sole and separate use [without power of anticipation], and after her decease to the said H. during his life, And after the decease of the survivor of the said H. and W. IN TRUST for such person or persons and in such manner as the said W. shall by any deed or deeds or by will appoint, and in default of and subject to any such appointment IN TRUST if the said W. shall survive the said H. for the said W. her executors administrators and assigns, But if she shall die in the lifetime of the said H. then IN TRUST for such person or persons as under the statutes for the distribution of the effects of intestates would on the decease of the said W. have become entitled thereto if she had died possessed thereof intestate and without having been married, such persons if more than one to take as tenants in common in the shares in which they would in that event have taken under the same statutes. (*Powers for the trustees to sell and lease may be inserted if desired, see pp. 169 and 171, but inasmuch as the married woman will possess these powers under the Settled Land Act, 1882, there does not seem to be any occasion for the insertion of them here where the trusts only last during the lives of the husband and wife*). AND IT IS HEREBY DECLARED that the said W. shall have the power of appointing new trustees of these presents, And the said B. and C. or other the trustees or trustee for the time being of these presents shall be the trustees hereof for the purposes of the Settled Land Act, 1882, and for all other purposes (x). IN WITNESS &c.

Husband for life.

Then as wife shall appoint,

or her next of kin, excluding husband.

Powers of sale &c.

Appointment of new trustees.

LXXXII.

APPOINTMENT by a mother, who has survived her husband, by Deed Poll in EXERCISE of a POWER contained in her marriage settlement, of one third of the funds subject to that settlement to her daughter in contem-

(x) See note to sect. 2, subs. 8, of that Act, p. 330.

Appointment of Share to Daughter.

*plation of her marriage, and RELEASE by the mother
of her LIFE INTEREST in that one third.*

Recital of
settlement
on mar-
riage of
parents.

TO ALL TO WHOM THESE PRESENTS SHALL

COME, W. of &c. widow sends greeting. WHEREAS by an Indenture dated &c. and made between H. of &c. since deceased of the 1st part the said W. of the 2nd part and B. and C. of the 3rd part, being the settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said H. and the said W., certain moneys stocks funds and securities therein mentioned were assigned by the said H. and W. respectively unto the said B. and C. their executors administrators and assigns, upon trust to pay the interest dividends and annual income thereof unto the said H. during his life, and after the decease of the said H. to the said W. during her life if she should be then living, and after the decease of the survivor of the said H. and W. in trust for all or such one or more exclusively of the other or others of the children of the then intended marriage and their issue &c. *(set out from settlement power of appointment by H. and W. jointly or by survivor)*, And in default of and subject to any such appointment In trust for all the children of

Death of
husband.

the then intended marriage as therein mentioned, AND WHEREAS the said H. died on the ——— day of ———

Children
of mar-
riage.

without having joined with the said W. in exercising the power of appointment so reserved to them as aforesaid, AND WHEREAS there have been three children only of the aforesaid marriage between the said H. and W. viz. D. E. and F. and the said D. has attained the age of twenty-one years, AND WHEREAS a marriage has been agreed upon

Intended
marriage
of a
daughter.
Agree-
ment to
appoint
share to
such
daughter:

and is intended shortly to be solemnized between the said D. and ——— of &c., AND WHEREAS in contemplation of the said intended marriage the said W. has agreed to appoint to the said D. the stocks funds and securities mentioned in the schedule hereto (y), being part of the

(y) Where it is not intended that the appointor's life interest should be released, but that the share ap-

pointed should remain in the hands of the trustees of the settlement, the appointment will be of "one equal

stocks funds and securities now subject to the trusts of the aforesaid Indenture of the ——— day of ———, And also to surrender the life interest of her the said W. in the said stocks funds and securities mentioned in the said schedule in favour of the said D. in manner hereinafter appearing, NOW THESE PRESENTS WITNESS that in pursuance of the said agreement and in consideration of the said intended marriage the said W. doth hereby in exercise of the power for this purpose given to her by the aforesaid Indenture of the ——— day of ——— and of every other power enabling her in this behalf appoint that ALL AND SINGULAR the stocks funds and securities specified in the schedule hereto shall, subject to the life interest therein of the said W. under the trusts of the said Indenture, henceforth belong to and be held in trust for the said D. her executors administrators and assigns. AND THESE PRESENTS ALSO WITNESS that in further pursuance of the said agreement and for the consideration aforesaid the said W. doth hereby surrender unto the said D. her executors administrators and assigns all the estate right title and interest of her the said W. during her life in and to the said stocks funds and securities specified in the said schedule hereto and hereinbefore appointed To the intent that she the said D. may become absolutely entitled in possession to the same stocks funds and securities. AND she the said W. doth hereby authorise and direct the trustees or trustee of the aforesaid Indenture of the ——— day of ——— to pay and transfer the said stocks funds and securities mentioned in the said schedule hereto to the said D. or as she shall direct. IN WITNESS &c.

Schedule to the above-written Indenture.

(List of Stocks.)

third part of the moneys stocks trusts of the aforesaid Indenture of funds and securities subject to the the ——— day of ———."

LXXXIII.

VOLUNTARY SETTLEMENT of REAL ESTATE *for the benefit of wife and children of settlor after his death (z).*

THIS INDENTURE made the ——— day of ———
 Between H. of &c. (*settlor*) of the one part and B. of &c.
 and C. of &c. (*trustees*) of the other part, WITNESSETH
 that in consideration of the natural love and affection of
 the said H. towards W. his wife and his children herein-
 after mentioned, and for divers other good considerations,
 He the said H. as settlor doth hereby grant unto the said
 B. and C. and their heirs ALL that messuage or dwelling-
 house known as ——— situate &c. and now in the
 occupation of the said H., TO HAVE AND TO HOLD the here-
 ditaments and premises hereby granted UNTO AND TO THE
 USE of the said B. and C. their heirs and assigns, UPON
 TRUST to permit the said H. and his assigns to continue in
 the occupation or to receive the rents and profits of the
 said hereditaments and premises during his life without
 impeachment of waste, And from and after his decease
 Upon trust to permit the said W., if she shall survive the
 said H., to reside in and occupy the said messuage and
 premises free of all rent or to receive the rents and profits
 thereof without impeachment of waste, so long as she shall
 remain a widow, And subject to the trusts aforesaid upon
 trust that the said B. and C. (a) or other the trustees or
 trustee for the time being of these presents shall at such
 time or times as they shall think fit sell (b) the said here-
 ditaments and premises, and also do and execute all such
 deeds things and assurances for effectuating such sale
 as they or he shall think fit. And shall stand possessed of

Grant of
real estate
to trustees,

upon trust
to permit
husband
to enjoy
the prop-
erty
during
his life,
then the
wife
during her
widow-
hood.

Subject as
aforesaid
upon trust
to sell.

(z) Under 27 Eliz. c. 4, voluntary settlements are void as against a subsequent purchaser or mortgagee from the settlor, even though with notice of the settlement. Under 13 Eliz. c. 5, they are void if made with

intent to defraud creditors.

(a) This power may be exercised by the surviving trustee, see Conveyancing Act, 1881, s. 38, p. 285.

(b) See Conveyancing Act, 1881, s. 35, p. 284.

the moneys to arise from such sale, after payment thereof of all expenses attending such sale or otherwise to be incurred in the execution of the trusts of these presents, IN TRUST to pay the annual income thereof unto the said W. if she shall be then living during her life or until she shall marry again, and after her decease or second marriage IN TRUST &c. *for children &c. as desired.* PROVIDED ALWAYS and it is hereby declared that the trustees or trustee may at any time or times, after the death of the said H. and W. or during the life of the said H. with his consent in writing and during the widowhood of the said W. with her consent in writing, demise all or any part of the said hereditaments and premises for any term not exceeding twenty-one years, to take effect &c., *see p. 171. (Investment Clause, see p. 159. Power to apportion on dividing the property, see p. 160. Clause for appointing new trustees, see p. 161).* IN WITNESS &c.

Trusts of purchase money:

for wife during widowhood,

then for children &c.

Power to lease for 21 years.

LXXXIV.

DEED of SEPARATION *between husband and wife.* THE HUSBAND covenants to pay ANNUITY to WIFE on being INDEMNIFIED against her DEBTS. The WIFE to have CUSTODY of a DAUGHTER.

THIS INDENTURE made the ——— day of ——— Between H. of &c. (*husband*) of the 1st part W. of &c. (*wife*) of the 2nd part and B. of &c. and C. of &c. (*trustees*) of the 3rd part, WHEREAS unhappy differences have arisen between the said H. and the said W. in consequence of which they have agreed to live separate from each other, NOW THIS INDENTURE WITNESSETH that in pursuance of such agreement and in consideration of the premises and of the covenant hereinafter contained on the part of the said B. and C. He the said H. doth hereby covenant with the said B. and C. that the said W. may at all times hereafter notwithstanding her coverture live separate from the said H. as if she were unmarried,

Agreement to separate.

Covenant by husband that wife may live separate

And may
enjoy her
property
for her
separate
use.

That her
will may
be proved,

and her
property
descend
without
claim or
interfer-
ence by
husband.

For
further
assur-
ance.

free from the power control and authority of the said H., and that he the said H. will not at any time hereafter compel or take any steps or proceedings to compel the said W. to live with him or in any manner molest or interfere with her, AND THAT notwithstanding her coverture all real and personal property to which the said W. or the said H. in her right now is or may at any time hereafter become entitled (c) [other than such property as is included in the Indenture of Settlement dated &c. and made in contemplation of the marriage between the said H. and the said W.] may be taken and enjoyed by the said W. for her sole and separate use, and may be sold or disposed of by her by deed will or otherwise as she shall think fit without any control or interference on the part of the said H., AND THAT the said H. will permit the will of the said W. to be proved by the executors or executor thereof, or administration to be taken out to her estate and effects by such person or persons as would if the said H. were then dead be entitled so to do, And will permit the real estate as to which the said W. shall die intestate to descend to her heir-at-law or customary heir free from all claim as tenant by the curtesy or otherwise and from all interference on the part of the said H., And will permit the personal estate as to which the said W. shall die intestate to be taken by or distributed among such person or persons as under the Statutes for the Distribution of the effects of intestates would on the decease of the said W. have become entitled thereto if she had died possessed thereof and the said H. were then dead, such persons if more than one to take as tenants in common in the shares in which they would in that event have taken under the same statutes: AND ALSO that he the said H. will at all times hereafter do and execute such deeds things and assurances for the purpose of giving full effect to the provisions of these presents as by the said B. and C. or other the trustees or trustee for the time being of these presents shall be reasonably required: AND ALSO that he the said

(c) See Married Women's Property Act, 1882, ss. 2 and 5, p. 149.

H. during the joint lives of the said H. and the said W. ^{Husband to pay annuity.} so long as the covenants hereinafter contained on the part of the said B. and C. shall be duly observed and performed will pay to the said B. and C. or the trustees or trustee for the time being the yearly sum of £——, by quarterly payments of £—— each on the ——day of—— &c. in every year without any deduction whatsoever, the first of such quarterly payments to be made on the —— day of —— next; the said yearly sum of £——, as the same shall from time to time be received by the said B. and C. or the trustees or trustee for the time being, to be paid by them or him to the said W. for her sole and separate use and so that she shall not have power to anticipate the same. AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreement and ^{Covenants by trustees:} in consideration of the premises They the said B. and C. do hereby covenant with the said H. THAT the said W. shall not at any time hereafter compel or take any steps or proceedings to compel the said H. to cohabit with the said W. or in any manner molest or interfere with the said H.: AND ALSO that they the said B. and C. and each ^{that wife will allow husband to live separate;} of them their and each of their heirs executors and administrators will at all times hereafter keep indemnified ^{to indemnify husband against debts of wife.} the said H. his heirs executors and administrators against all debts and liabilities hereafter to be contracted or incurred by the said W., and against all actions costs charges claims and demands for or on account of such debts and liabilities or any of them. AND WHEREAS there ^{Agreement as to custody of children.} have been children of the said marriage between the said H. and the said W. two sons and one daughter D., NOW THIS INDENTURE WITNESSETH that It is hereby agreed and declared (d) between and by the parties hereto

(d) The Act 36 Vict. c. 12, enacts, s. 2: "No agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason only of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother: Provided always, that no Court shall enforce any such agreement if the Court shall be of opinion that it will not be for the benefit of the infant or infants to give effect thereto."

Separation Deed.

Deed to
be void if
parties
reconciled.

that so long as the covenants hereinbefore contained on the part of the said B. and C. shall be observed and performed the said W. shall have the sole custody and control of the said D. and shall bear the expense of her maintenance and education until she shall attain the age of twenty-one years without any interference on the part of the said H. (*Power to appoint new trustees, which will probably be given to the wife or to the trustees*). PROVIDED ALWAYS and it is hereby declared that if the said H. and W. shall be reconciled and cohabit together then the covenants and provisions contained in these presents shall be void, but without prejudice to anything that may have been done under them. IN WITNESS &c.

LXXXV.

DISENTAILING DEED by *Tenant in Tail in Possession (c)*.

THIS INDENTURE made the ——— day of ———
 Between H. of &c. (*tenant in tail*) of the one part and X.
 of &c. (*grantee to uses*) of the other part, WHEREAS under
 or by virtue of an Indenture dated &c. and made &c. [*or* Title of
tenant in
tail.
 under or by virtue of the will of J. S. dated &c.] the said
 H. is tenant in tail in possession of the messuages lands
 and hereditaments situate at &c. and therein described
 and intended to be hereby granted in manner hereinafter
 appearing, NOW THIS INDENTURE WITNESSETH
 that for the purpose of barring the said estate tail and all
 other estates tail of him the said H. in the said heredita-
 ments, and all remainders reversions estates interests and
 powers to take effect after the determination or in defeas-
 ance of such estate tail or any other estates tail of the
 said H. He the said H. doth hereby grant unto the said Grant of
property
to X.
 X. and his heirs ALL AND SINGULAR the freehold mes-
 suages lands and hereditaments situate at ———
 aforesaid or elsewhere of or to which the said H. is now
 seised or entitled for an estate in tail under the aforesaid
 Indenture of the ——— day of ——— [*or under the said*
will] or otherwise howsoever, TO HAVE AND TO HOLD the he-
 reditaments and premises hereby granted UNTO the said X.
 and his heirs FREED AND DISCHARGED from the said estate Freed
from the
estate tail,
 tail and all other estates tail of him the said H. and from
 all remainders reversions estates interests and powers to

(c) The Abolition of Fines and
 Recoveries Act, 3 & 4 Will. IV.
 c. 74, requires—s. 34, the consent of
 the protector, if any, to create a
 larger estate than a base fee; s. 40,
 the disposition to be by deed, and if
 by a married woman with her hus-

band's consent and acknowledged;
 s. 41, the deed to be inrolled within
 six months; s. 46, if protector's con-
 sent be given by a distinct deed,
 such deed to be inrolled with or
 before the disentailing assurance.

Consent of Protector.

take effect after the determination or in defeasance of such estate or estates tail TO THE USE of the said H. his heirs and assigns for ever. IN WITNESS &c.

LXXXVI.

CONSENT of PROTECTOR to the barring of an estate tail.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. of &c. sends greeting. WHEREAS &c. (*recitals showing A. to be tenant for life and H. tenant in tail in remainder*), NOW THESE PRESENTS WITNESS that the said A. doth hereby as protector of the settlement give his consent to any and every disposition or assurance which the said H. shall make of all or any part of the said manors lands and hereditaments comprised in the aforesaid [will] or now subject to the uses and trusts thereof for the purpose of barring the estate tail of the said H. in the same manors lands and hereditaments and all remainders reversions estates interests and powers to take effect after the determination or in defeasance of such estate tail. IN WITNESS &c.

LXXXVII.

SURRENDER of COPYHOLDS to BAR ESTATE TAIL in remainder (f), the TENANT for LIFE having given his CONSENT by a SEPARATE DEED.

Recitals
showing
title.

The Manor of ——— } WHEREAS &c. (*Recitals showing A. to be tenant for life, and*
in the County of ——— }

(f) If the estate tail in the copyholds be equitable, it may be barred either by a surrender or by deed entered on the Court rolls of the manor, see Prec. LXXXIX. and ss. 50 and 53 of Fines and Recoveries

Act, 3 & 4 Will. IV. c. 74. The deed by which the protector's consent is given must in like manner be entered either at or before the surrender, s. 51.

H. tenant in tail in remainder), AND WHEREAS at a Court holden for the said Manor on the ——— day of ——— the said A. was admitted to the aforesaid copyhold hereditaments as tenant for life under [the said will of the said J. S.], AND WHEREAS by a deed poll under the hand and seal of the said A. dated the ——— day of ——— the said A. as protector of the settlement gave his consent to any disposition or assurance which the said H. might make of the aforesaid copyhold hereditaments or any part thereof for the purpose of barring the estate tail of the said H. therein and all remainders reversions estates interests and powers to take effect after the determination or in defeasance of such estate tail, NOW THEREFORE BE IT REMEMBERED that on the ——— day of ——— the said H. came before S. of &c. the steward of the said manor and did out of Court surrender into the hands of the lord of the manor by the hands and acceptance of the said S. according to the custom of the said manor ALL &c. (*parcels*), to which hereditaments and premises the said A. was admitted as aforesaid, and all other hereditaments if any holden of the said manor of or to which the said H. is seised or entitled as tenant in tail under the said [will] as aforesaid or otherwise howsoever, TO THE USE of the said H. his heirs and assigns at the will of the lord according to the custom of the said manor at and under the rents fines suits and services therefor due and of right accustomed, Subject nevertheless and without prejudice to the estate for life of the said A. therein and all powers annexed to such estate, But freed and discharged from the estate tail of the said H. and all remainders reversions estates interests and powers to take effect after the determination or in defeasance of such estate tail.

This surrender was taken and accepted }
 this ——— day of ——— by me. }

S.

Steward of the said Manor.

LXXXVIII.

DISENTAILING DEED of FREEHOLDS and CAPITAL MONEYS
comprised in a Settlement by TENANT IN TAIL *with*
 CONSENT of PROTECTOR *with a view to a Resettle-*
ment of the Family Estates.

Recital of
 settle-
 ment.

THIS INDENTURE made the ——— day of ———
 Between A. of &c. (*tenant for life and protector of the*
settlement) of the 1st part H. of &c. (*tenant in tail eldest*
son of A.) of the 2nd part and X. of &c. (*grantee to uses*)
 of the 3rd part, WHEREAS by an Indenture of Settlement
 dated &c. and made between &c., being the settlement
 executed previous to the marriage shortly afterwards solemn-
 ized between the said A. and ——— his wife, the free-
 hold manor messuages lands and hereditaments situate in
 the several parishes of ——— and ———
 in the county of ——— in the said Indenture of
 Settlement more particularly described were limited and
 assured to certain uses therein mentioned, which uses so far
 as they are now subsisting and material to be here set forth
 were to the use of the said A. and his assigns during his life
 without impeachment of waste, [with remainder to the use
 of trustees during the life of A. to preserve contingent re-
 mainders], with remainder to the use that the said (*wife of A.*)
 should if she should survive the said A. receive the yearly
 rent-charge of £—— during her life as therein mentioned,
 with remainder to the use of (*trustees*) for the term of 200
 years for securing the said rent-charge, with remainder to
 the use of (*trustees*) for the term of 1000 years for securing
 portions for the younger children of the said A. as therein
 mentioned, with remainder to the use of the first and every
 other son of the said A. successively according to their
 respective seniorities in tail male with divers remainders
 over, AND by the same Indenture it was declared that
 certain stocks funds and securities invested in the names
 of the said (*trustees of the settlement*) and all moneys then

in their hands and all moneys to arise from the sale of any portions of the hereditaments thereby settled under the power in that behalf contained should be laid out in the purchase of other hereditaments to be settled to the uses and upon the trusts by the same Indenture declared of and concerning the hereditaments thereby settled, AND WHEREAS certain portions of the said hereditaments comprised in the said Indenture of Settlement have been sold, and out of the moneys arising from such sales and out of the stocks funds securities and moneys comprised in the same Indenture of Settlement other hereditaments have been bought and by Indentures dated &c. &c. respectively have been settled to the uses of the said Indenture of Settlement of the ——— day of ———, and the residue of such stocks funds securities and moneys is now invested in the names or remains in the hands of the trustees of the same Indenture of Settlement and is subject to the aforesaid trust for investment in land, AND WHEREAS all or some of the hereditaments now subject to the uses of the same Indenture of Settlement are subject to the several charges and incumbrances specified in the schedule hereto, AND WHEREAS the said H. is the first son of the said A. and attained the age of twenty-one years on the ——— day of ——— last, AND WHEREAS the said A. and H. have agreed to bar the said estate in tail male and all other estates tail of the said H. in the aforesaid manor messuages lands and hereditaments and in the aforesaid securities and moneys and all remainders reversions estates interests and powers to take effect after the determination or in defeasance of such estate in tail male or estates tail and to limit and assure the said manor messuages lands and hereditaments securities and moneys in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises He the said A. as to his estate for life in the hereditaments intended to be hereby granted doth hereby grant, and He the said H. with the consent of the said A. as protector of the settlement testified by his execution of

Subsequent dealings with property.

Present incumbrances.

Eldest son having attained 21 years, Agreement to bar the entail with a view to resettlement.

Disentailing Deed before Resettlement.

Grant of
estates to
X.

freed from
the estate
tail,

subject to
prior
estates
and in-
cum-
brances,

to uses to
be jointly
declared,

subject
thereto to
uses of
prior
settle-
ment.

Disentail-
ing of
moneys.

these presents doth hereby grant unto the said X. and his heirs ALL AND SINGULAR the freehold manor messuages lands and hereditaments (except such parts thereof as have been sold as aforesaid) in the said Indenture of Settlement of the ——— day of ——— described and thereby limited and assured as aforesaid, AND ALSO ALL AND SINGULAR the freehold hereditaments in the said Indentures of &c. &c. respectively described and thereby settled as aforesaid, and all other the freehold hereditaments now subject to the uses of the said Indenture of Settlement of the ——— day of ———, TO HAVE AND TO HOLD the manor hereditaments and premises hereby granted UNTO the said X. and his heirs, FREED AND DISCHARGED from the said estate in tail male and all other estates tail of him the said H. and from all remainders reversions estates interests and powers to take effect after the determination or in defeasance of such estate in tail male or estates tail, BUT SUBJECT and without prejudice to the aforesaid charges and incumbrances and to all the uses estates and powers which under the said Indenture of Settlement are prior to the said estate in tail male or estates tail of him the said H. (other than the estate for life of the said A.) and to the uses and estates limited in exercise of such powers, TO SUCH USES upon such trusts and with and subject to such powers provisions and declarations as the said A. and H. shall by deed or deeds with or without power of revocation and new appointment jointly direct limit and appoint, And in default of and subject to such appointment TO THE USES upon the trusts and with and subject to the powers provisions and declarations declared and contained in the said Indenture of Settlement of and concerning the freehold hereditaments thereby settled so far as the same are still subsisting or capable of taking effect. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement They the said A. and H. do and each of them doth hereby assign unto the said X. his executors administrators and assigns ALL AND SINGULAR

the stocks funds securities and moneys now subject to the aforesaid trust for investment in land under the said Indenture of Settlement of the ——— day of ———, To HAVE AND TO HOLD the said stocks funds securities and moneys hereby assigned UNTO the said X. his executors administrators and assigns, FREED AND DISCHARGED from the said estate in tail male and all other estates tail of him the said H. and from all remainders reversions estates interests and powers to take effect after the determination or in defeasance of such estate in tail male or estates tail, UPON SUCH TRUSTS and with and subject to such powers provisions and declarations as the said A. and H. shall by deed or deeds with or without power of revocation and new appointment jointly direct limit and appoint, And in default of and subject to such appointment UPON THE TRUSTS and with and subject to the powers provisions and declarations declared and contained in the said Indenture of Settlement of and concerning the stocks funds securities and moneys thereby settled so far as the same are still subsisting or capable of taking effect. IN WITNESS &c.

LXXXIX.

DISENTAILING DEED *of equitable estate in COPYHOLDS by*
TENANT IN TAIL *with CONSENT of PROTECTOR with a*
view to a Resettlement of the Family Estates (g).

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*tenant for life and protector of the*
settlement) of the 1st part H. of &c. (*tenant in tail eldest*
son of A.) of the 2nd part and X. of &c. (*grantee to uses*)
of the 3rd part, WHEREAS by an Indenture of Settlement
dated &c. and made between &c. being the settlement
executed previous to the marriage shortly afterwards

Recital
of settle-
ment.

(g) The estate tail here being of being so entered it is often more
equitable can be disentailed by deed convenient to disentail the copy-
entered on the Court rolls. See holds by a separate deed from that
note (f), p. 182. For the purpose disentailing the freeholds.

Admit-
tance of
trustees.

Eldest son
having
attained
21 years,
Agree-
ment to
bar the
entail with
a view to
resettle-
ment.

Grant of
copyholds
to X.

freed from
the estate
tail, to
uses to be

solemnized between the said A. and ——— his wife the copyhold hereditaments situate &c. in the said Indenture of Settlement more particularly described were covenanted to be surrendered to the use of the said (*trustees of the settlement*) their heirs and assigns upon such trusts and with and subject to such powers provisions and declarations as should best correspond with the uses trusts powers provisions and declarations declared and contained in the same Indenture of Settlement of and concerning the freehold hereditaments thereby settled which uses so far as they are now subsisting and material to be here set forth were &c., *see p. 184*, AND WHEREAS at a Court held for the said Manor on the ——— day of ——— the said (*trustees*) were duly admitted to the said copyhold hereditaments, AND WHEREAS the said H. is the first son of the said A. and attained the age of twenty-one years on the ——— day of ——— last, AND WHEREAS the said A. and H. have agreed to bar the said estate in tail male and all other estates tail of the said H. in the copyhold hereditaments now subject to the trusts of the same Indenture of Settlement and all remainders reversions estates interests and powers to take effect after the determination or in defeasance of such estate in tail male or estates tail and to limit and assure the said copyhold hereditaments in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises He the said A. as to his estate for life in the copyhold hereditaments intended to be hereby granted doth hereby grant, and He the said H. with the consent of the said A. as protector of the settlement testified by his execution of these presents doth hereby grant unto the said X. and his heirs ALL AND SINGULAR the copyhold hereditaments now subject to the trusts of the said Indenture of Settlement, TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO the said X. and his heirs, FREED AND DISCHARGED &c., *see p. 186*, UPON SUCH TRUSTS &c. as A. and H. shall jointly appoint, *see p. 186*, And in default of and subject

to such appointment UPON THE TRUSTS and with and jointly de-
subject to the powers provisions and declarations declared
and contained in the said Indenture of Settlement of and
concerning the copyhold hereditaments thereby settled so
far as the same are still subsisting or capable of taking
effect. IN WITNESS &c.

XC.

RESETTLEMENT of FAMILY ESTATES comprising FREE-
HOLDS, COPYHOLDS, LEASEHOLDS, and CAPITAL
MONEYS on eldest son tenant in tail attaining
twenty-one.

THIS INDENTURE made the ——— day of ———
Between A. of &c. (*tenant for life in possession*) of the
first part H. of &c. (*tenant in tail eldest son of A.*) of the
second part and B. of &c. C. of &c. and D. of &c. (*trustees*)
of the third part, WHEREAS by an Indenture of Settlement
&c. (*recite settlement made on marriage of A. of freeholds,*
copyholds, leaseholds, and capital moneys, the dealings
with the property, and the charges thereon, and that H. is
his eldest son and has attained twenty-one, and that B.
C. and D. are the present trustees of the settlement, see
Precedents LXXXVIII., LXXXIX., pp. 184, 187), AND
WHEREAS by an Indenture dated &c. inrolled and per-
fected as a disentailing assurance and expressed to be
made between the said A. of the first part the said H. of
the second part and X. of the third part the said freehold
manor messuages lands and hereditaments and also the
stocks funds securities and moneys subject to the uses
trusts and powers of the hereinbefore recited Indenture of
Settlement were subject and without prejudice to the
aforesaid charges and incumbrances and to the uses estates
and powers which under the same Indenture are prior to
the estate in tail male of the said H. (other than the estate
for life of the said A.) and to the uses and estates limited
in exercise of such powers limited to such uses upon such
trusts and with and subject to such powers provisions and

Recital
of prior
settle-
ment &c.

Recital of
disentail-
ing deed
of free-
holds and
moneys.

declarations as the said A. and H. should by any deed or deeds with or without power of revocation and new appointment jointly direct limit and appoint, and in default of and subject to such appointment To the uses upon the trusts and with an.l subject to the powers provisions and declarations declared and contained in the said Indenture of Settlement so far as the same are still subsisting or capable of taking effect, AND WHEREAS by an Indenture bearing even date with the last recited Indenture and expressed to be made between the same parties and entered and perfected as a disentailing assurance the copyhold hereditaments subject to the trusts and powers of the hereinbefore recited Indenture of Settlement were subject &c. limited upon such trusts &c., *as before*, AND WHEREAS the said A. and H. have agreed to make such settlement of the said manor and freehold copyhold and leasehold messuages lands and hereditaments and the said securities and moneys as is hereinafter contained, NOW THIS INDENTURE WITNESSETH that in part pursuance of the said agreement and in consideration of the premises They the said A. and H. as settlors (*g*) in exercise of the power for this purpose given to them by the firstly hereinbefore recited Indenture of the ——— day of ——— (*deed disentailing freeholds*) and of all other powers if any enabling them or either of them in this behalf do and each of them doth hereby direct limit and appoint that A.L. &c. (*parcels of freeholds*), And all other if any the freehold hereditaments included in the same disentailing assurance shall henceforth, but subject and without prejudice to the several charges and incumbrances now affecting the same hereditaments as aforesaid and also subject to the uses estates and powers which under the said Indenture of Settlement are prior to the estate in tail male thereby limited to the said H. as the first son of the said A. as aforesaid (other than the estate limited

Recital of
disentail-
ing deed of
copyholds.

Agree-
ment to
resettle.

Appoint-
ment of
estates,

(*g*) Or "as beneficial owners."
But the covenant for further assur-
ance seems sufficient; see Convey-

ancing Act 1881, s. 7, subs. 1, E,
p. 255.

to the said A. and his assigns during his life as aforesaid) and to the uses and estates limited in exercise of such powers, go and be [TO SUCH USES (h) upon such trusts and with and subject to such powers provisions and declarations as the said A. and H. shall from time to time by any deed or deeds with or without power of revocation and new appointment jointly appoint, And in default of and subject to any such appointment] To THE USES upon the trusts and with and subject to the powers provisions and declarations following; that is to say, To THE USE that the said H. and his assigns shall during the joint lives of himself and the said A. receive the yearly rent-charge of £——, to be charged upon the said manor hereditaments and premises hereby settled, and to be payable quarterly on the —— day of —— &c. in every year without any deduction whatsoever, the first of such payments to be made on the —— day of —— next (i); And subject as aforesaid To THE USE of the said A. and his assigns during his life without impeachment of waste in restoration of his life estate under the hereinbefore recited Indenture of Settlement and so that his powers of jointuring and charging portions and other powers thereby given may remain in full force, And after the decease of the said A. To THE USE of the said H. and his assigns during

to uses &c. as father and son shall jointly appoint, subject thereto to uses following:

Rent-charge to eldest son.

To use of father for life,

To use of

(h) The words in brackets may be omitted if it is not desired to give the father and son an opportunity of making a fresh settlement, as upon the son's marriage. Where besides the estates appointed by the father and son, the father brings fresh property of which he is absolute owner in fee into the settlement, the appointment will be "To THE USES upon the trusts and with and subject to the powers provisions and declarations hereinafter declared and contained." And there will be a separate testatum granting such fresh property to the trustees and their heirs to hold the same "To THE USES &c. hereinafter declared

and contained," and the deed will then go on to declare "that the aforesaid appointment and grant shall respectively operate and enure and that the hereditaments and premises hereby appointed and granted respectively shall go remain and be To THE USES upon the trusts &c. following: that is to say &c."

(i) Powers of distress and entry and of demising the land charged to a trustee to secure payment are given by the Conveyancing Act, 1881, s. 44. It is therefore unnecessary to insert these powers in the deed, or to limit the lands to trustees for a term of years to secure the rent-charge, see p. 290.

eldest son
for life,
To use of
his sons in
tail male,

his life without impeachment of waste, And after the
decease of the said H. To THE USE of the first and every
other son of the said H. successively in remainder one
after the other according to their respective seniorities
and the heirs male of their respective bodies, And in

To use of
second son
for life,

default of such issue To THE USE of J. the second son of the
said A. and his assigns during his life without impeachment
of waste, And after the decease of the said J. To THE USE

To use of
his sons in
tail male,

of the first and every other son of the said J. successively
in remainder one after the other according to their re-

To use of
after-born
sons of
father in
tail male,

spective seniorities and the heirs male of their respective
bodies, And in default of such issue To THE USE of the
third and every other son hereafter to be born of the said
A. successively in remainder one after the other according
to their respective seniorities and the heirs male of their

To use of
eldest son's
sons in
tail,

respective bodies, And in default of such issue To THE
USE of the first and every other son of the said H.
successively in remainder one after the other according
to their respective seniorities and the heirs of their respec-

To use of
daughters
of eldest
son as
tenants in
common in
tail with
cross re-
mainders
between
them,

tive bodies, And in default of such issue To THE USE of
all the daughters of the said H. and the heirs of their
respective bodies in equal shares as tenants in common,
And if and so often as any such daughter shall die without
issue then as well as to her original share as to any share
or shares which under this present limitation shall have
accrued to her or to the heirs of her body To THE USE of

To use of
second
son's sons
in tail,

the others of such daughters and the heirs of their re-
spective bodies in equal shares as tenants in common,
And if all such daughters but one shall die without issue
or there shall be but one such daughter then as to the
entirety of the said manor hereditaments and premises
To THE USE of such one or only daughter and the heirs

To use of
daughters
of second

of her body, And in default of such issue To THE USE
of the first and every other son of the said J. successively in
remainder one after the other according to their respective
seniorities and the heirs of their respective bodies, And in
default of such issue To THE USE &c. *(of the daughters of J.
as tenants in common in tail with cross remainders*

between them), And in default of such issue TO THE USE son in tail,
of the third and every other son hereafter to be born of To use of
the said A. successively in remainder one after the other after-bo. n
according to their respective seniorities and the heirs of sons of
their respective bodies, And in default of such issue TO father in
THE USE &c. *(of the daughters of A. as tenants in common* tail,
in tail with cross remainders between them), And in To use of
default of such issue TO THE USE of the said H. his heirs daughters
and assigns (j). PROVIDED ALWAYS and it is hereby of father
agreed and declared that it shall be lawful for every person in tail,
hereby made tenant for life of the said manor heredita- To use of
ments and premises hereby settled, other than the said A., eldest son
either before or after becoming entitled to the possession in fee.
or to the receipt of the rents and profits thereof (but Power to
subject and without prejudice to the uses and estates and tenants for
powers prior to the estate of the person for the time life to
being exercising this power and to the uses or estates jointure
limited in exercise of such powers) at any time or times wives.
by any deed or deeds with or without power of revocation
or by will or codicil to appoint to any woman whom he
may marry or have married for her life or for any less
period, and by way of jointure and in bar [or without being
in bar] of dower and freebench, any yearly rent-charge or
rent-charges, not exceeding in the whole the annual sum
of £——, to be charged upon the said hereditaments
and premises hereby settled or any part thereof, and to be
payable without any deduction [except succession duty] at
such times and in such manner as he shall direct ; And it
is hereby declared that the power of jointuring lastly here-
inbefore contained may be exercised by any person for the
time being entitled to exercise the same so often as he shall
marry : PROVIDED ALWAYS that no rent-charge so to be Jointures
appointed as aforesaid shall take effect or become payable not to take
unless and until the person appointing the same shall effect
unless

(j) In some settlements the limitations in tail male are carried on to daughters and their issue, in which case a name and arms clause, for

which see Prec. XCIII., p. 209, would probably be inserted after the limitations.

persons
appointing
come into
possession.

Jointures
not to
exceed
£—— in
all.

Power to
tenants for
life to
charge
portions.

under the limitations hereinbefore contained be or become entitled, or would if he had been living have become entitled during the life of such wife, to the possession or to the receipt of the rents and profits of the said manor hereditaments and premises hereby settled: PROVIDED ALSO that the said manor hereditaments and premises hereby settled shall not under the exercise of the power lastly hereinbefore contained be at any one time liable to the payment of yearly rent-charges exceeding in the whole the yearly sum of £——, but if by the exercise of the same power the said manor hereditaments and premises or any part thereof would but for this present proviso be charged with the payment of rent-charges to a larger amount than aforesaid, the payment of the rent-charge or rent-charges which shall occasion such excess, or such part thereof as shall occasion such excess, shall during the continuance of such excess be suspended, and the said rent-charges shall have priority according to the priority in order of limitation of the estates of the persons by whom the same shall respectively be charged. PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for every person hereby made tenant for life of the said manor hereditaments and premises hereby settled, other than the said A., either before or after becoming entitled to the possession or to the receipt of the rents and profits thereof (but subject and without prejudice to the uses and estates and powers prior to the estate of the person for the time being exercising this power and to the uses or estates limited in exercise of such powers) at any time or times by any deed or deeds with or without power of revocation or by will or codicil to charge the said hereditaments and premises hereby settled or any part thereof with the payment of any sum or sums not exceeding in the whole the sum of £—— (k), for the portion or portions of his child

(k) By the method adopted in the text the estates would be charged with as large an amount as they could reasonably bear for the por-

tions of the younger children, so that the fewer such children the greater the portion which each would take, and on the failure of any to attain

or children (other than an eldest or only son for the time being under the limitations hereinbefore contained entitled in possession or remainder to the first estate in tail male or in tail), such portion or portions to be vested in and payable unto such child or children or any one or more exclusively of the other or others of them at such age or ages time or times, and if more than one in such shares, and subject to such powers of appointment and to such provisions for the maintenance education advancement and benefit of any such child or children, and generally in such manner as the person for the time being exercising this power shall direct: And also to charge the same hereditaments and premises with the payment of such yearly sum or sums of money as he shall think fit, not exceeding what the interest of the portion or portions so charged as aforesaid would be at the rate of £4 per cent. per annum, for the maintenance and education of such child or children until his her or their portion or portions shall become payable: And by the same or any other deed or deeds or by will or codicil, but subject and without prejudice as aforesaid, to appoint the said hereditaments and premises so charged with portions to any person or persons for any term or terms of years without impeachment of waste, upon the usual trusts for raising the portion or portions and yearly sum or sums so charged as aforesaid and the costs and expenses of raising the same: PROVIDED ALWAYS that every such charge of portions and appointment of a term to secure the same shall contain a power for the trustees for the time being of such term upon any sale exchange partition or mortgage of the lands and hereditaments for the time being comprised therein or any part or parts thereof under the Settled Land Act 1882 to release the lands and hereditaments so sold

Power to trustees to release hereditaments comprised in term on any sale &c.

vested interests their portions would go to the other younger children. Another method is to make the amount charged for portions vary with the number of younger chil-

dren, in which case the fewer such children the less would be the charge on the estates in the hands of the eldest son.

exchanged partitioned or mortgaged from the whole or any part of the portions so charged but not actually raised and either with or without the concurrence or consent of the person or persons beneficially entitled to any portion and either with or without consideration and without being in any way responsible for any loss which may arise from so doing, And for such purpose to execute and do all necessary deeds and things (l):

Portions
not to take
effect
unless
persons
charging
come into
possession.

AND PROVIDED ALSO that no portion so to be charged as aforesaid shall take effect or become payable unless and until the person charging the same shall under the limitations hereinbefore contained be or become entitled, or would if he had been living have become entitled, to the possession or to the receipt of the rents and profits of the said manor hereditaments and premises hereby settled:

Portions
not to
exceed
£—— in
all.

PROVIDED ALSO that the said manor hereditaments and premises hereby settled shall not under the exercise of the power lastly hereinbefore contained ultimately become liable to the payment of any sum of money for portions exceeding in the whole the sum of £ ——, but if by the exercise of the same power the said manor hereditaments and premises or any part thereof would but for this present proviso be charged with the payment of sums for portions to a larger amount than aforesaid the portion or portions which shall occasion such excess or such part thereof as shall occasion such excess shall fail and not be raiseable out of the same hereditaments and premises, and the said portions shall have priority according to the priority in order of limitation of the estates of the persons by whom the same shall respectively be charged. AND THIS INDENTURE ALSO WITNESSETH that in further part pursuance of the said agreement and in consideration of the premises They the said A. and H. as settlors in exercise of the power for this purpose given to them by the secondly hereinbefore recited Indenture of the —— day of —— (*deed disentailing copyholds*) and of all other powers if

Appoint-
ment of
copyholds.

(l) As to the insertion of this the Settled Land Act, 1882, p. 344.
power, see note (p) to s. 20, subs. 2, of

any enabling them or either of them in this behalf do and each of them doth hereby direct limit and appoint that ALL &c. (*parcels of copyholds*), And all other if any the copyhold hereditaments included in the same disentailing assurance shall henceforth, but subject and without prejudice to the several charges and incumbrances now affecting the same hereditaments as aforesaid and also subject to the uses estates and powers which under the said Indenture of Settlement are prior to the estate in tail male thereby limited to the said H. as the first son of the said A. as aforesaid (other than the estate limited to the said A. and his assigns during his life as aforesaid) and to the uses and estates limited in exercise of such powers, go and be UPON SUCH TRUSTS and with and subject to such powers provisions and declarations as shall correspond with the uses trusts powers provisions and declarations hereinbefore declared and contained of and concerning the freehold hereditaments and premises hereby settled or as near thereto as the different tenures and qualities of the same will permit but not so as to increase or multiply charges or powers of charging. AND THIS INDENTURE ALSO WITNESSETH that in further part pursuance of the said agreement and in consideration of the premises They the said A. and H. as settlors in respect of their estates and interests respectively (*m*) do and each of them doth hereby assign unto the said B. C. and D. their executors administrators and assigns, ALL AND SINGULAR the leasehold hereditaments now subject to the trusts of the hereinbefore recited Indenture of Settlement of the ——— day of ———, TO HAVE AND TO HOLD the leasehold hereditaments and premises hereby assigned UNTO the said B. C. and D. their executors administrators and assigns UPON SUCH TRUSTS and with and subject to such powers provisions and declarations as shall correspond with the uses

Upon corresponding trusts.

Assignment of leaseholds,

Upon corresponding trusts.

(*m*) Under the settlement made on A.'s marriage before recited, he has an equitable estate for life in the leaseholds, and H. having at-

tained twenty-one has an equitable estate in remainder. The legal estate remains in the trustees.

Declara-
tion of
trusts of
capital
moneys.

Appoint-
ment of
new trus-
tees.

Powers of
trustees.

trusts powers provisions and declarations hereinbefore declared and contained of and concerning the freehold hereditaments and premises hereby settled or as near thereto as the different tenures and qualities of the same will permit but not so as to increase or multiply charges or powers of charging, And so that no leasehold hereditaments for years shall vest absolutely in any person hereby made tenant in tail male or in tail by purchase of the said freehold hereditaments unless he or she shall attain the age of twenty-one years but on his or her death under that age shall go and devolve in like manner as if the same leasehold hereditaments were freeholds of inheritance and were included in the settlement hereinbefore contained of such freehold hereditaments. AND IT IS HEREBY AGREED AND DECLARED that all stocks funds securities and moneys now held by the said B. C. and D. as such trustees as aforesaid and all other moneys which shall come to their hands as such trustees shall be held by the said B. C. and D. or other the trustees or trustee for the time being of this settlement as capital money under the Settled Land Act, 1882, and shall be applied by them or him accordingly (n). AND IT IS HEREBY LASTLY AGREED AND DECLARED that the said A. during his life and after his death the said H. or other the tenant for life for the time being under this settlement shall have the power of appointing new trustees of this settlement, And the said B. C. and D. and all other trustees of this settlement shall be trustees hereof for the purposes of the Conveyancing Acts, 1881, 1882, and of the Settled Land Act, 1882, and for all other purposes (o). IN WITNESS &c.

(n) See Settled Land Act, 1882, ss. 33, 21, pp. 357, 345.

(o) See Conveyancing Act, 1881, s. 42, giving a power of managing the estates during minorities, and

Settled Land Act, 1882, s. 2, subs. 8, and notes thereto, pp. 287, 330. This latter Act supplies all necessary powers of leasing selling &c.

XCI.

SETTLEMENT upon MARRIAGE made in exercise of POWERS of JOINTURING and CHARGING PORTIONS given to H. in the preceding settlement.

THIS INDENTURE made the ——— day of ——— Between H. of &c. (*intended husband*) of the 1st part W. of &c. (*intended wife*) of the 2nd part and B. of &c. and C. of &c. (*trustees of portions*) of the 3rd part, WHEREAS &c. (*recite shortly the preceding Settlement under which A. was tenant for life and H. tenant for life after the death of A., with remainder to H.'s first and other sons in tail male, setting forth in full the powers of jointuring and charging portions*), AND WHEREAS the said A. died (p) on the ——— day of ——— and thereupon the said H. became and is now tenant for life in possession of the said manor and hereditaments settled by the hereinbefore recited Indenture of the ——— day of ———, AND WHEREAS a marriage has been agreed upon and is intended shortly to be solemnized between the said H. and the said W., AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said H. should exercise the aforesaid powers of jointuring and charging portions given to him by the said Indenture of the ——— day of ——— in manner hereinafter appearing, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said intended marriage He the said H. as settlor in exercise of the powers for this purpose given to him by the said Indenture of the ——— day of ——— and of every other power in anywise enabling him in this behalf doth hereby appoint UNTO AND TO THE USE of the said W. and her assigns for her life in case the said intended marriage shall be solemnized and she shall survive the said H. the yearly rent-charge of £ ——— for her jointure and in bar of all dower and free-bench, such rent-charge to

Recital of settlement with powers of jointuring &c.
Death of father and succession of son.

Marriage agreed upon.
Agreement to jointure and charge portions.

Appointment of rent-charge to wife.

(p) These powers can be exercised whether A. is still living or dead.

be charged upon the hereditaments and premises comprised in the hereinbefore recited Indenture of the ——— day of ——— or now subject to the trusts thereof, and to be payable quarterly without any deduction whatsoever [except succession duty], the first of such payments to be made at the expiration of three calendar months after the decease of the said H. (q). AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the said intended marriage He the said H. as settlor in exercise of the aforesaid powers doth hereby charge ALL AND SINGULAR the same hereditaments and premises (subject to the said rent-charge and the provisions for securing the same), with the payment of the sum of £ ——— to be raised after the death of the said H., or during his life with his consent in writing, for the portion or portions of the child or children of the said H. whether by the said W. or by any after-taken wife [or of the said intended marriage] (other than an eldest or only son for the time being under the limitations in the said Indenture of the ——— day of ——— contained entitled in possession or remainder to the first estate in tail male or in tail), Such portion or portions to be vested in and payable unto such child or children or any one or more exclusively of the other or others of them at such age or ages time or times, but as to a son not previous to his attaining the age of twenty-one years and as to a daughter to her attaining that age or marrying, and if more than one in such shares, and subject to such provisions for the maintenance education advancement and benefit of any such child or children in the meanwhile, and generally in such manner as the said H. shall by any deed or deeds with or without power of revocation or by will or codicil direct and appoint, And in default of and subject to any such appointment the said sum of £ ——— to be for the portions of all the children of the said H. whether by the said W. or by any after-taken wife [or of the said

Charge for portions for younger children.

Portions to be subject to appointment.

In default of appointment, for children equally.

(q) See p. 191, note (i).

intended marriage], (other than such eldest or only son as aforesaid), who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under it in equal shares, and if there shall be only one such child then for the portion of such child: PROVIDED ALWAYS that no child taking any part of the said sum of £—— under any appointment shall be entitled to share in the unappointed part of the said sum of £—— without bringing the part so appointed into hotchpot and accounting for the same accordingly, unless the said H. shall on making such appointment declare the contrary. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the said intended marriage He the said H. in exercise of the aforesaid powers doth hereby charge All and singular the same hereditaments and premises (subject to the said rent-charge and the provisions for securing the same), with the payment after his death of such yearly sum or sums of money as the said B. and C. or other the trustees or trustee for the time being of these presents shall think fit, but not exceeding what the interest of the portion or portions of the child or children for the time being entitled in expectancy to a portion or portions as aforesaid would be at the rate of £4 per cent. per annum, for or towards the maintenance and education of such child or children until his her or their portion or portions shall become payable, with liberty for the person or persons raising the same sum or sums to pay the same to the guardian or guardians for the time being of such child or children for the purposes aforesaid without being bound to see to the application thereof(*r*). AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the said intended marriage He the said H.

Hotchpot.

Charge of
yearly
sums for
main-
tenance.

(*r*) The powers of maintenance &c. given to trustees by s. 43 of the Conveyancing Act, 1881, does not seem to apply where there is no

property held by trustees in trust for an infant, but only a contingent direction to raise money at a future date. See note to that section, p. 289.

Appoint-
ment to
trustees
for 1000
years,

to raise
portions.

Advance-
ment.

Subject as
aforesaid
rents &c.
to go
according
to settle-
ment.

as settlor in exercise of the aforesaid powers doth hereby appoint ALL AND SINGULAR the same hereditaments and premises (subject to the said rent-charge and the provisions for securing the same), UNTO AND TO THE USE of the said B. and C. their executors administrators and assigns for the term of 1000 years to commence from the death of the said H. without impeachment of waste, UPON TRUST that if and whenever the said sum of £—— or any part thereof or any interest for the same or any yearly sum or sums for maintenance shall from time to time become payable under the provisions hereinbefore contained, They the said B. and C. or other the trustees or trustee for the time being of these presents shall by and out of the rents and profits of the same hereditaments and premises, or by the sale of timber or minerals, or by mortgage of the same hereditaments and premises or any part thereof for all or any part of the said term of 1000 years, or by all or any of the means aforesaid or by any other reasonable means, raise and pay the said sum of £—— or so much thereof as shall have become payable and also such interest for the same and such yearly sum or sums for maintenance as aforesaid, together with all costs and expenses incurred in raising the same. PROVIDED ALWAYS and it is hereby declared that it shall be lawful for the said trustees or trustee at any time or times after the death of the said H., or during his life with his consent in writing, to raise any sum or sums of money not exceeding in the whole one half part of the then expectant portion of any child of the said H. and to pay the money so raised to such child or otherwise to apply the same for his or her advancement or benefit in such manner as the said H. during his life and after his death as the said trustees or trustee shall think fit. AND IT IS HEREBY DECLARED that subject to the trusts hereinbefore declared the rents and profits of the said hereditaments and premises comprised in the said term of 1000 years shall be received by the person or persons for the time being entitled to the same hereditaments and premises in reversion immediately ex-

pectant upon the same terms. PROVIDED ALWAYS and it is hereby declared that notwithstanding anything hereinbefore contained it shall be lawful for the said B. and C. or other the trustees or trustee for the time being of these presents upon any sale exchange partition or mortgage of the lands and hereditaments for the time being comprised in the said term of 1000 years or of any part or parts of the same lands and hereditaments under the Settled Land Act 1882 to release the lands and hereditaments so sold exchanged partitioned or mortgaged from the whole or any part of the portions so charged as aforesaid but not actually raised and either with or without the concurrence or consent of the person or persons beneficially entitled to any portion and either with or without consideration and without being in any way responsible for any loss which may arise from so doing, And for such purpose to execute and do all necessary deeds and things (s). (*Provision for appointment of new trustees, see p. 161*). IN WITNESS &c.

Power to trustees to release hereditaments comprised in term on sale &c.

XCII.

RESETTLEMENT OF FAMILY ESTATES *on eldest Son tenant in tail attaining twenty-one and being about to marry.*

THIS INDENTURE made the ——— day of ——— Between A. of &c. (*tenant for life in possession*) of the 1st part H. of &c. (*tenant in tail eldest son of A.*) of the 2nd part W. of &c. (*intended wife*) of the 3rd part B. of &c. C. of &c. and D. of &c. (*trustees of the settlement*) of the 4th part (t), WHEREAS by an indenture of settlement &c. (*recite settlement made on the marriage of A., the dealings with the property, and the charges thereon, and that H. is his eldest son and has attained twenty-one, as in Prec. LXXXVIII., see p. 184*), AND WHEREAS a marriage

Recital of settlement &c.

Marriage

(s) As to the insertion of this power, see p. 195, and note to s. 20, subs. 2, of the Settled Land Act, 1882, p. 344.

(t) It is not necessary to appoint

a separate set of trustees for the portions. Power to appoint trustees of the rent-charge is given to the person entitled by s. 44 of the Conveyancing Act, 1881, see p. 290.

agreed upon.
Agreement for resettlement.

Disentailing deed.

Appointment of estates,

To the uses following :

Until the marriage.

After the marriage.
Rent-charge to eldest son,
Rent-charge to his intended wife,

To use of father for life,

has been agreed upon and intended shortly to be solemnized between the said H. and the said W., AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said manor and freehold copyhold and leasehold hereditaments and premises and the said securities and moneys should be settled to the uses upon the trusts and with and subject to the powers provisions and declarations hereinafter declared and contained of and concerning the same, AND WHEREAS in part pursuance of the said agreement by an Indenture &c. (*recite the disentailing deeds, see p. 189*), NOW THIS INDENTURE WITNESSETH that in further pursuance of the said agreement and in consideration of the said intended marriage They the said A. and H. as settlors (*m*) &c. *set out appointment of hereditaments, see p. 190, not to such uses as A. and H. shall appoint but to the uses &c. following, that is to say, until the solemnization of the said intended marriage To the uses upon the trusts and with and subject to the powers provisions and declarations existing immediately before the execution of these presents, And from and after the solemnization of the said intended marriage To THE USE &c. (that H. may receive a rent-charge of £—— during the life of A., see p. 191), AND TO THE FURTHER USE that after the death of the said H. the said W. and her assigns shall if she be then living receive during her life the yearly rent-charge of £—— for her jointure and in bar of all dower and freebench, such rent-charge to be charged upon the said manor hereditaments and premises hereby settled, and to be payable quarterly without any deduction whatsoever [except succession duty], the first of such payments to be made at the expiration of three calendar months after the decease of the said H. (*n*) ; And subject as aforesaid To THE USE of the said A. and his assigns during his life without impeachment of waste in restoration of his life estate under the hereinbefore recited Indenture of*

(*m*) See p. 190, note (*g*).

(*n*) See p. 191, note (*i*).

the ——— day of ———, and so that his powers of jointuring and charging portions thereby given may remain in full force, And after the decease of the said A. To THE USE of the said H. and his assigns during his life without impeachment of waste, And after the decease of the said H. To THE USE of the said B. C. and D. their executors administrators and assigns for the term of 1000 years to commence from the death of the survivor of the said A. and H. without impeachment of waste, upon the trusts and with and subject to the powers provisions and declarations hereinafter declared and contained of and concerning the same; And subject as aforesaid To THE USE of the first and every other son of the said H. &c. (*see p. 192*). AND IT IS HEREBY AGREED AND DECLARED that the said manor hereditaments and premises are hereby limited to the said B. C. and D. their executors administrators and assigns for the term of 1000 years as aforesaid, Upon trust that if there shall be any child or children of the said H. whether by the said W. or by any after-taken wife (x), (other than an eldest or only son for the time being under the limitations hereinbefore contained entitled in possession or remainder to the first estate in tail male or in tail), who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry, then the said B. C. and D. or other the trustees or trustee for the time being of the said term shall after the death of the survivor of the said A. and H., or during their lives or the life of the survivor of them with their or his consent in writing, by and out of the rents and profits of the said hereditaments and premises, or by the sale of timber or minerals, or by mortgage of the same hereditaments and premises or any part thereof for all or any part of the said term, or by all or any of the means

To use of eldest son for life,
To use of trustees of portions for 1000 years.

Remain-
ing uses.

Trusts of
term of
1000 years.

(x) The settlement is sometimes framed so as to give the sum charged for portions to the younger children of the first marriage alone; and a provision is added enabling the

husband in the event of his marrying again to charge the estates with portions for the younger children of such subsequent marriage or marriages.

aforesaid or by any other reasonable means, raise the sum of £—— for the portion or portions of such child or children (other than such eldest or only son as aforesaid), such portion or portions &c. (*see p. 195, to the end of the hotchpot clause*). PROVIDED ALWAYS (y) and it is hereby agreed and declared that it shall be lawful for the trustees or trustee of the said term at any time or times after the death of the said H., but not during the life of the said A. unless with his consent in writing, by and out of the rents and profits of the said hereditaments and premises to raise such yearly sum or sums of money &c. (*provision for maintenance and education, see p. 201*). PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the trustees or trustee of the said term at any time or times after the death of the said A., but not during the life of the said H. unless with his consent in writing, to raise &c. (*provision for advancement, see p. 202*). AND IT IS HEREBY DECLARED. that subject to the trusts hereinbefore declared the rents and profits of the said hereditaments and premises comprised in the said term of 1000 years shall be received by the person or persons for the time being entitled to the same hereditaments and premises in reversion immediately expectant upon the same term. PROVIDED ALWAYS &c. (*provision for releasing the hereditaments comprised in the term upon any sale exchange partition or mortgage, see p. 203*). PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the said H. if he shall survive the said W. and marry again, and also for every person hereby made tenant for life of the said manor hereditaments and premises hereby settled, other than the said A., either before or after becoming entitled to the possession or to the receipt of the rents and profits thereof (but subject and without prejudice to the uses and estates and powers prior to the estate of the person for the time being exercising this power and to the uses or estates

Provision
for maintenance.

Advancement.

Subject as
aforesaid
rents &c.
to go
according
to settle-
ment.

Power to
tenants for
life to
jointure
wives.

(y) See note to s. 43 of the Conveyancing Act, 1881, p. 289.

limited in exercise of such powers), at any time or times by any deed or deeds with or without power of revocation or by will or codicil to appoint to any woman whom he may marry or have married &c. (*power to jointure with provisions for limiting the number of jointures and their total amount, see pp. 193, 194*). PROVIDED ALWAYS and it is hereby agreed and declared &c. (*power for tenants for life, "other than the said A. and H.," to charge the settled estates with portions for their younger children, and to appoint terms, with provisions for releasing the hereditaments comprised therein and for limiting the total amount of the portions, see pp. 194—196. Appointment of copyholds and assignment of leaseholds upon corresponding trusts and declaration as to trusts of capital moneys, as in Prec. XC. pp. 196, 197*). AND IT IS HEREBY LASTLY AGREED AND DECLARED that the said A. during his life and after his death the said H. or other the tenant for life for the time being under this settlement shall have the power of appointing new trustees of this settlement and that the said H. shall have the power of appointing new trustees of the said term of 1000 years, and the said B. C. and D. and all other trustees of this settlement shall be trustees thereof for the purposes of the Conveyancing Acts, 1881, 1882, and of the Settled Land Act, 1882, and for all other purposes (y). IN WITNESS &c.

Power for tenants for life to charge portions.

Copyholds and leaseholds.

Appointment of new trustees.

(y) See Conveyancing Act, 1881, s. 2, subs. 8, and notes thereto, s. 42, and Settled Land Act, 1882, pp. 287, 330.

XCIII.

WILL devising FREEHOLDS in STRICT SETTLEMENT, with name and arms clause. COPYHOLDS, LEASEHOLDS and HEIRLOOMS upon corresponding Trusts.

THIS IS THE LAST WILL of me J. S. of &c. I

Devise of freeholds. DEVISE all my freehold messuages lands and hereditaments situate &c. and known as ———, And all other freehold hereditaments of or to which I may at my death be seised or entitled or over which I may at my death have a general power of appointment or disposition by will (except such parts thereof as I may otherwise dispose of by this my will or by any codicil thereto), with their appurtenances,

To use of nephew for life, To THE USE of my nephew A. of &c. and his assigns during his life without impeachment of waste, And from

To use of nephew's eldest son for life, and after his decease To THE USE of H. the eldest son of the said A. and his assigns during his life without impeachment of waste, And from and after his decease To THE USE

To use of his sons in tail male, of the first and every other son of the said H. successively according to their respective seniorities in tail male, With

To use of nephew's second son for life, remainder To THE USE of J. the second son of the said A. and his assigns during his life without impeachment of waste, And from and after his decease To THE USE of the

To use of his sons in tail male, first and every other son of the said J. successively according to their respective seniorities in tail male, With

To use of nephew's future sons in tail male, remainder To THE USE of the third and every other son hereafter to be born of the said A. successively according to their respective seniorities in tail male, With remainder

To use of eldest son's sons and daughters in tail, To THE USE of the first and every other son of the said H. successively according to their respective seniorities in tail, With remainder &c. (*to the use of the daughters of H. in tail*), With remainder To THE USE of the first and

To use of second son's sons and daughters in tail, every other son of the said J. successively according to their respective seniorities in tail, With remainder &c. (*to the use of the daughters of J. in tail*), With remainder

To use of nephew's future sons in tail, To THE USE of the third and every other son hereafter to be born of the said A. successively according to their respective seniorities in tail, With remainder &c. &c.

(*as desired*), With remainder To THE USE of my own right heirs for ever. PROVIDED ALWAYS that if any person or persons hereby made tenant or tenants in tail male and in tail by purchase of the hereditaments hereby devised is or are now born or shall hereafter be born in my lifetime then the estates in tail male and in tail respectively of such person or persons shall not take effect, and in lieu of such estate in tail male I devise the said hereditaments To the use of every such person during his life without impeachment of waste, And after his decease To the use of his first and other sons successively according to their respective seniorities in tail male, And in lieu of such estate in tail I devise the said hereditaments To the use of his first and other sons successively according to their respective seniorities in tail, With remainder &c. (*to the use of his daughters in tail*). PROVIDED ALWAYS AND I HEREBY DECLARE that every person who under the limitations of this my will shall become entitled to the possession or to the receipt of the rents and profits of the hereditaments hereby devised as tenant for life or tenant in tail male or in tail by purchase and who shall not then bear the surname and arms of S. shall within twelve calendar months after he or she shall have become so entitled or if he or she shall then be under the age of twenty-one years then within twelve calendar months after attaining that age and if such person shall be a female and shall marry then that her husband also shall within twelve calendar months after she shall have become so entitled or after their marriage whichever shall last happen assume the surname and arms of S. and apply for a license for that purpose, And if the person so becoming entitled and in the case of a married woman her husband shall not comply with the direction lastly hereinbefore contained or shall afterwards discontinue to use and bear the surname or arms of S. then the estate of such person under this my will shall cease and determine, And if the person whose estate shall so determine shall be a tenant for life the said hereditaments shall

To use of testator's right heirs.
Proviso for reducing tenants in tail born in testator's lifetime to tenants for life.

Name and arms clause.

thenceforth go and be To the use of B. of &c. and C. of &c. their heirs and assigns during the life of such person In trust to pay the rents and profits of the said hereditaments to or to permit the same to be received by the person or persons for the time being entitled to the same hereditaments in remainder immediately expectant on the death of such tenant for life, And if the person whose estate shall so determine shall be a tenant in tail male or in tail the said hereditaments shall immediately go to the next person or persons who would be entitled in remainder under this my will if such tenant in tail male or in tail

Powers for tenants for life to jointure and charge portions.

Devise of copyholds,

Upon corresponding trusts.

Bequest of leaseholds,

were then dead without issue. PROVIDED ALWAYS and I hereby declare that it shall be lawful for every person hereby made tenant for life &c. (*power to jointure wives and charge portions for younger children, see pp. 193—196, mutatis mutandis*). I DEVISE all copyhold and customary messuages lands and hereditaments of or to which I may at my death be seised or entitled or over which I may at my death have a general power of appointment or disposition by will (except such parts thereof as I may otherwise dispose of by this my will or by any codicil thereto), with their appurtenances, UNTO AND TO THE USE of the said B. and C. their heirs and assigns according to the custom of the manors of which the same shall respectively be holden, UPON SUCH TRUSTS and with and subject to such powers provisions and declarations as shall correspond with the uses trusts powers provisions and declarations hereinbefore declared and contained of and concerning the freehold hereditaments and premises hereinbefore devised or as near thereto as the different tenures and qualities of the same will permit but not so as to increase or multiply charges or powers of charging. I DEVISE AND BEQUEATH all the leasehold messuages lands and hereditaments whether held for any life or lives or for any term or terms of years of or to which I may at my death be possessed or entitled or over which I may at my death have a general power of appointment or disposition by will (except such parts thereof as I may otherwise dispose of

by this my will or by any codicil thereto), with their appurtenances, UNTO the said B. and C. their executors administrators and assigns for all the estate term and interest which I may have therein respectively at my death, UPON TRUST by and out of the rents and profits thereof to pay the rents and other sums reserved by the leases thereof respectively and to perform the covenants and conditions therein contained and on the part of the lessee to be observed and performed, And subject thereto to hold the same leasehold premises UPON SUCH TRUSTS and with and subject to such powers provisions and declarations as shall correspond with the uses trusts powers provisions and declarations hereinbefore declared and contained of and concerning the freehold hereditaments and premises hereinbefore devised or as near thereto as the different tenures and qualities of the same will permit but not so as to increase or multiply charges or powers of charging, And so that no leasehold hereditaments for years shall vest absolutely in any person hereby made tenant in tail male or in tail by purchase of the said freehold hereditaments unless he or she shall attain the age of twenty-one years but on his or her death under that age shall go and devolve in like manner as if the same leasehold hereditaments were freeholds of inheritance and were included in the devise hereinbefore contained of such freehold hereditaments. I GIVE AND BEQUEATH all my plate pictures prints books manuscripts busts statues sculptures bronzes antiquities and furniture which at the time of my decease shall be in or about or belonging to my mansion house called ——— House unto the said B. and C. their executors administrators and assigns, UPON TRUST to permit the same to go and devolve as heirlooms together with the freehold hereditaments hereinbefore devised, but so nevertheless that the said heirlooms shall not vest absolutely in any person hereby made tenant in tail male or in tail by purchase of the said freehold hereditaments unless he or she shall attain the age of twenty-one years but on his or her death under

Upon corresponding trusts.

Bequest of heirlooms.

that age shall go and devolve in like manner as if the same heirlooms were freeholds of inheritance and were included in the devise hereinbefore contained of such freehold hereditaments. AND I DIRECT that so soon as conveniently may be after my decease my trustees or trustee shall make or cause to be made an inventory of the plate and other articles hereinbefore bequeathed as heirlooms and that such inventory shall be signed by every person for the time being entitled to the use of the said heirlooms and also by the trustees or trustee for the time being of this my will, and that such inventory shall be kept in the possession of such trustees or trustee; AND I DIRECT that the person or persons for the time being entitled to the use of such heirlooms under the provisions of this my will shall keep the same in a good state of preservation and insured against loss or damage by fire, But I declare that my trustees or trustee shall not be bound to see that the said heirlooms are preserved or insured or be answerable for any loss or injury whatsoever which may happen to the said heirlooms. *(Here will follow bequest of legacies, bequest of personal estate not hereinbefore disposed of to the said B. and C. upon trust to pay funeral and testamentary expenses debts and legacies and then upon trust as desired).* AND I APPOINT the said B. and C. trustees and executors of this my will, and the said A. during his life and after his death the said H. or other the tenant for life for the time being under this my will shall have the power of appointing new trustees hereof, And the said B. and C. and all other trustees of this my will shall be trustees hereof for the purposes of the Conveyancing Acts, 1881, 1882, and of the Settled Land Act, 1882, and for all other purposes (2). AND I HEREBY REVOKE all former wills and testamentary dispositions made by me. IN WITNESS whereof I the said J. S. have to this my will contained in ——— sheets of paper set my hand this ——— day of ——— 18——.

J. S.

Personal
estate.

(2) See Prec. XC., note (c), p. 198.

Signed and acknowledged by the above-named testator J. S. as his last will in the presence of us present at the same time who in his presence and in the presence of each other have hereunto subscribed our names as witnesses (a).

Signatures of the two witnesses and their descriptions.

XCIV.

WILL giving LEGACIES including one to a hospital; REAL ESTATE and RESIDUE of PERSONAL ESTATE to trustees, IN TRUST for WIFE for life, remainder to CHILDREN. POWER to trustees to carry on BUSINESS, with OPTION to sons to purchase.

THIS IS THE LAST WILL of me J. S. of &c. I APPOINT my wife W. and B. of &c. and C. of &c. to be ^{Executors} executrix and executors of this my will, And I give to each of them the said B. and C. the sum of £—— for his trouble in the execution of the trusts hereof. I give to my said wife all my furniture plate linen china glass ^{Furniture &c. to wife.} books pictures prints wines and liquors and other household effects and also my horses carriages and harness for her own use and benefit, And I also give to her the sum of £—— to be paid to her immediately ^{£—— to wife.} after my decease. I BEQUEATH the following legacies free ^{Pecuniary legacies.} of legacy duty, that is to say, To —— the sum of £—— &c. &c., And also to the —— Hospital the sum of £—— and I direct that the last-mentioned legacy shall be paid out of such part of my personal estate ^{Legacy to charity} as may be legally bequeathed for charitable purposes, and the receipt of the treasurer or secretary of the said hospital for the time being shall be a sufficient discharge

(a) See s. 9 of the Wills Act, 1 Vict. c. 26. Gifts by the will to an attesting witness or to the husband

or wife of an attesting witness are void, see s. 15 of the same Act.

Real estate and residue of personal estate to trustees, Upon trust to convert, to pay funeral expenses debts and legacies. Residue. In trust for wife for life, then for children equally. Children of deceased child to	for the said legacy. AND all my real estate and the residue of my personal estate I GIVE DEVISE AND BEQUEATH unto my said wife and the said B. and C. their heirs executors and administrators respectively. Upon trust to sell or convert into money my real estate and such part of my personal estate as shall not consist of money, And out of the proceeds of such sale and conversion and out of such part of my personal estate as shall consist of money to pay my funeral and testamentary expenses and debts and the legacies and annuities bequeathed by this my will or any codicil thereto, And to stand possessed of the residue of my estate after answering the purposes aforesaid Upon the trusts following; that is to say, IN TRUST to pay the annual income thereof to my said wife during her life, And after her death IN TRUST for all my children living at my decease who being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry in equal shares, and if there shall be but one such child then the whole to be in trust for such child (b). PROVIDED ALWAYS (c) that if any child or children of mine shall die
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(b) The following clause provides also for the children of any son who survives the testator, but dies under twenty-one: "IN TRUST in equal shares for all my children living at my decease who being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry and the child or children of any son of mine surviving me but dying under the age of twenty-one years who being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry but so that such last-mentioned child or children shall take and equally among them if more than one the share only which the deceased parent would have taken if

he had lived to attain the age of twenty-one years."

(c) The Statute of Wills, 1 Vict. c. 26, enacts s. 33, "That where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall

in my lifetime leaving a child or children who shall survive me and being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry then such last-mentioned child or children shall take and equally among them if more than one the share which the deceased parent would have taken if such parent had survived me and attained the age of twenty-one years. [AND I DECLARE (d) that my trustees or trustee for the time being may after the death of my said wife apply for or towards the maintenance and education of any child or grandchild of mine for the time being presumptively entitled to a share under the trusts of this my will, until the same share shall become vested or payable, such yearly sums of money not exceeding the amount of the annual income of the same share as my said trustees or trustee shall think fit or may in their discretion pay such sums to the guardian or guardians for the time being of such child or grandchild for the purposes aforesaid without being bound to see to the application thereof, And shall from time to time invest the surplus annual income of every such share and accumulate the same for the benefit of such person or persons as under the trusts of this my will shall become absolutely entitled to the same share; But my said trustees or trustee may at any time apply the accumulations of a preceding year or years for or towards the maintenance and education of any child or grandchild for the time being presumptively entitled thereto.] AND I DECLARE that my trustees or trustee for the time being may at any time or times after the death of my said wife or during her life with her consent in writing, raise any part or parts not exceeding in the whole

take
parent's
share.

Mainten-
ance and
education.

Advance-
ment.

appear by the will." This section does not apply where the gift is expressly made contingent on the child surviving the testator, nor where the gift is to a child as one of a class, see Jarman on Wills, 4th Ed. p. 353.

(d) It is sometimes convenient for the trustees to have this clause inserted in the will, although the Conveyancing Act, 1881, s. 43, provides that the trustees may apply the income of an infant's property towards his maintenance, see p. 289.

one half part of the expectant share of any child or grandchild of mine, and may either pay the same to such child or grandchild or otherwise apply the same for his or her advancement preferment or benefit in such manner as my said trustees or trustee shall think fit. AND IN DEFAULT of any child or other issue becoming absolutely entitled under the trusts aforesaid my said trustees or trustee shall stand possessed of my residuary estate IN TRUST for &c. (as desired). AND I DECLARE that my trustees or trustee for the time being shall be at liberty to leave any funds that may be subject to the trusts of this my will upon the security or securities upon which the same may be invested at the time of my death without being bound to see to the deficiency of such securities or being responsible for any loss that may arise from their insufficiency: And shall invest all principal moneys coming to their hands by virtue of this my will in their or his names or name &c., see p. 159.

In default of children. AND ALSO with respect to any real or leasehold estate hereinbefore directed to be sold shall have power to postpone the sale thereof or of any part thereof until such time or times as they or he shall think fit, and in the meantime until such sale to lease for such period and upon such terms as they or he shall think fit all or any part of my said real and leasehold estate. AND ALSO shall have power on dividing the funds and property for the time being subject to the trusts of this my will to apportion the same between the persons beneficially interested therein as my said trustees or trustee shall deem equal or as nearly equal as may be, And it shall not be necessary for the purposes of such division to convert all the said funds and property into money or to assign to or retain for each person interested therein either absolutely or presumptively a part of each specific fund. PROVIDED ALWAYS and I hereby declare that it shall be lawful for my trustees or trustee for the time being, so long as they or he in their or his absolute and uncontrolled discretion shall think fit, to carry on [or join in carrying on] the business of ——— now carried on by me [in co-partnership under the firm of

Investment clause.

Power to postpone sale of real estate.

And in meantime to lease.

Power to apportion.

Direction to trustees to carry on business.

———] at ——— and for that purpose to retain my capital or any part thereof in the said business and to employ therein any part of my residuary estate and to engage [or join in engaging] any manager or agent for the purpose of conducting the said business and generally to do all such things as my trustees or trustee shall think fit for the purpose of carrying on or at any time winding up the said business without being responsible for any loss that may arise through such carrying on or winding up, And the profits received by my said trustees or trustee from the said business shall be applied in the same manner as the income of my residuary estate ; And I hereby further declare that as and when each of my sons shall attain the age of twenty-one years he shall have the option provided my said trustees or trustee shall then be carrying on the said business of purchasing the said business [or my share therein] upon such terms as my said trustees or trustee shall think fit. AND I DECLARE that my said wife shall have the power of appointing new trustees of this my will. AND I APPOINT my said wife during her life and after her death the said B. and C. guardian and guardians of my infant children during their respective minorities. AND I HEREBY REVOKE all former wills and testamentary dispositions made by me (e). IN WITNESS &c.

Option to sons successively to purchase business.

Appointment of new trustees. Guardians.

XCV.

WILL of a WIDOWER. DEVISE of REAL ESTATE to his ELDEST SON. *A sum of £5000 to be set apart for his MARRIED DAUGHTER for life then for her CHILDREN as she shall appoint, or in default of appointment equally, with POWER for her by will to appoint a LIFE INTEREST to her HUSBAND. RESIDUE of personalty, as to one THIRD for ELDEST SON, as to one other THIRD for SECOND SON, as to remaining THIRD for THIRD*

(e) The devise of trust and mortgage estates should now be omitted, see Conveyancing Act, 1881, s. 30, p. 230.

SON during life or until bankruptcy, and then for his CHILDREN equally at twenty-one or marriage, in default of children for two other sons equally.

THIS IS THE LAST WILL of me J. S. of &c. I

Executors. appoint my son H. and my friends B. of &c. and C. of &c.

Devise of real estate to son. executors of this my will. I DEVISE my farm called ——— situate at ——— and all other if any my real estate unto my said son H. and his heirs absolutely. I GIVE AND

Bequest of personal estate to executors. BEQUEATH all my personal estate unto my said son H. and the said B. and C. their executors and administrators Upon trust to sell or convert into money such part thereof as shall not consist of money and out of the proceeds of such sale and conversion and out of such part of my said personal estate as shall consist of money in the first place

Upon trust to pay debts &c. £5000 to be set apart and held by his trustees, to pay my funeral and testamentary expenses and debts, and in the next place to set apart the sum of £5000 upon the trusts hereinafter declared concerning the same.

Upon trust for daughter for life ; AND I HEREBY DECLARE that my said son H. and the said B. and C. or other the trustees or trustee for the time being of this my will shall stand possessed of such sum of £5000 and the stocks funds and securities upon which the same shall for the time being be invested UPON TRUST to pay the annual income thereof to my daughter D. the wife of ——— during her life for her separate use without power of anticipation and her receipts alone shall be good discharges for the same, And

Then for her husband for life, if she so directs by will ; from and after her decease UPON TRUST in case my said daughter D. shall by will or codicil so direct to pay the whole or any part of such annual income unto the said (*daughter's husband*) or any husband who may survive her during his life or for any less period, And subject to

Then for her children as she appoints ; the trusts aforesaid IN TRUST for all or such one or more exclusively of the other or others of the children of my said daughter D. and their issue (such issue to be born in the lifetime of my said daughter or within twenty-one years from her death) at such age or ages time or times in such shares if more than one with such provisions for

maintenance education and advancement upon such conditions and generally in such manner as my said daughter D. shall whether covert or sole by any deed or deeds with or without power of revocation and new appointment or by will or codicil appoint, And in default of and subject to any such appointment IN TRUST for all the children of my said daughter D. who being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry under it in equal shares and if there shall be but one such child then the whole to be in trust for such child. Provided nevertheless that no child who or any of whose issue shall take any part of the said sum of £5000 under any appointment by my said daughter as aforesaid shall be entitled to any share in the unappointed part of the same sum without bringing the part or parts so appointed into hotchpot and accounting for the same accordingly unless my said daughter shall on making such appointment declare the contrary. (*Maintenance and advancement clauses, see p. 215, mutatis mutandis*). And in case there shall be no child or issue of my said daughter D. who under the aforesaid trusts shall become absolutely entitled to the said sum of £5000 then and in such case the said sum of £5000 and the stocks funds and securities for the time being representing the same [shall be held by my trustees or trustee in trust for such person or persons for such purposes and in such manner as my said daughter shall by deed or will appoint and in default of and subject to any such appointment] shall sink into and form part of the residue of my personal estate. AND AS TO ALL THE RESIDUE of my personal estate I declare that my trustees or trustee shall stand possessed thereof upon the trusts following; that is to say, As to one third part thereof IN TRUST for my said son H. absolutely, As to one other third part thereof IN TRUST for my son J. absolutely, And as to the remaining third part thereof UPON TRUST to pay the annual income thereof unto to my son K. during his life unless and until he shall either during my life or after my death have become bankrupt or shall have assigned

In default of appointment for her children equally at twenty-one or marriage. Hotchpot.

In default of such children, in trust as daughter shall appoint, or in default of appointment to sink into residue.

Residue.

One third to eldest son.

One third to second son.

One third for third son till bankruptcy;

charged or incumbered the said income or any part thereof or shall have done or suffered anything whereby the said income or any part thereof if payable to him absolutely would become payable to any other person or persons, And thenceforth during the life of my said son to

Then for support of his family; pay or apply the said income or any part or parts thereof to or for the benefit of my said son K. and his wife and child or children if any or some or one of them in such shares and in such manner in all respects as my trustees or trustee shall in their or his absolute discretion think fit and as to any wife of my said son for her separate use, And to invest and accumulate the whole of the said income if no part thereof shall be so paid or applied or such part thereof as shall not be so paid or applied and add such accumulations to the capital and apply the-same accordingly with power nevertheless to pay or apply such accumulations or any part thereof as if the same were

After the death of such son for his wife for life ; income of the then current year, And after the death of my said son K. to pay the said income arising from the said capital and accumulations if any to W. the wife of my said son K. if she shall be then living during her widowhood, And subject to the trusts aforesaid my trustees or trustee shall stand possessed of the said capital and accumulations if any IN TRUST for all the children of my

Then for his children at twenty-one or marriage ; said son K. who being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry in equal shares and if there shall be but one such child then in trust for such child, And in

In default of such children for testator's other sons. case there shall be no such child then IN TRUST for my said sons H. and J. in equal shares as tenants in common. (*Investment clause, see p. 216. Power to apportion, see p. 216*). AND I HEREBY REVOKE all former wills and testamentary dispositions made by me. IN WITNESS &c.

XCVI.

APPOINTMENT by WILL by a MARRIED WOMAN *under powers contained in the settlement made upon her former marriage. She appoints a LIFE INTEREST in a moiety of the trust funds to her present HUSBAND if he survives her, and subject thereto she appoints ONE FIFTH of the trust funds to her ELDEST SON, ONE FIFTH to an UNMARRIED DAUGHTER, ONE FIFTH to a MARRIED DAUGHTER for her separate use, ONE FIFTH to a SON who is a minor CONTINGENTLY on his attaining twenty-one, the REMAINING FIFTH to such of the CHILDREN of a DECEASED DAUGHTER as attain twenty-one or marry. The share of any appointee dying in lifetime of testatrix to go to his or her children. On failure of the trusts of any share such share to accrue to the other shares.*

THIS IS THE LAST WILL of me Jane Smith the wife of John Smith of &c. (*her second husband*), WHEREAS by an Indenture dated &c. and made between James Jones (*her first husband*) since deceased of the 1st part myself the said Jane Smith then Jane Harrison spinster of the 2nd part and B. and C. of the 3rd part, being the Settlement made in contemplation of the marriage shortly afterwards solemnized between the said James Jones and myself, certain trust funds therein mentioned and called the wife's property were transferred and assured unto the said B. and C. their executors administrators and assigns upon trust after the death of the survivor of the said James Jones and myself for all or such one or more of the children of the said James Jones and myself or their issue &c. (*set out the trusts showing the power to James Jones and Jane Smith or the survivor to appoint the capital of the trust funds among their children and issue born within twenty-one years from the decease of the survivor, and the power to Jane Smith to appoint a proportion of the income to any subsequent husband for his life, see*

Recital of settlement made on former marriage of testatrix.

Children
of former
marriage.

Death of
former
husband.

Appoint-
ment.

Income of
moiety to
present
husband
for life.

Subject
thereto,
one fifth to
son ;

One fifth
to un-
married
daughter ;
One fifth
to married
daughter ;

One fifth
to son at
twenty-
one ;

One fifth
to children
of a
deceased
daughter.

Prec. LXXVII.), AND WHEREAS there have been five children only of my marriage with the said James Jones; that is to say, Henry Jones, Mary Jones, Eliza the wife of Robert Robinson, Samuel Jones who is now an infant of the age of fifteen years, and a daughter Sarah who married William White and died leaving three children her surviving who are all now living but under the age of twenty-one years, AND WHEREAS the said James Jones died without having joined with me in the exercise of the power reserved to us jointly as aforesaid, NOW THEREFORE in exercise of the powers for this purpose given to me by the aforesaid Indenture of the ——— day of ——— and of all other powers if any enabling me in this behalf I do by this my last will direct and appoint that the trustees or trustee of the same Indenture shall stand possessed of the said wife's property and the stocks funds and securities upon which the same shall for the time being be invested UPON TRUST to pay the annual income of one moiety or half part thereof to my husband the said John Smith in case he shall survive me during his life, And subject to the interest so appointed to my said husband UPON THE TRUSTS following, that is to say, As to one fifth part or share of the said wife's property IN TRUST for my said son Henry Jones absolutely; And as to one other fifth part or share thereof IN TRUST for my said daughter Mary Jones absolutely (e); And as to one other fifth part or share thereof IN TRUST for my said daughter Eliza Robinson for her separate use independently of her present or any future husband and her receipt alone shall be a good discharge for the same (e); And as to one other fifth part thereof IN TRUST for my said son Samuel Jones if and when he shall attain the age of twenty-one years; And as to the remaining fifth part or share thereof IN TRUST for all the children living at my decease of my deceased daughter Sarah White who being a son or sons attain the age of twenty-one years or being a daughter or daughters attain

(e) See Married Women's Property Act, 1882, ss. 2, 5, p. 149.

that age or marry in equal shares and if there shall be but one such child then the whole of such last-mentioned fifth part to be in trust for such child. PROVIDED ALWAYS and I hereby declare that if any child of mine or any child or children of my said deceased daughter Sarah White shall die in my lifetime leaving a child or children who shall survive me and being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry then such last-mentioned child or children shall take and if more than one equally among them the share which the deceased parent would have taken if such parent had survived me and attained the age of twenty-one years. PROVIDED ALWAYS and I hereby declare and appoint that any share or shares of which the trusts hereinbefore declared shall either in my lifetime or after my death fail or become incapable of taking effect shall go and accrue to or equally among the other share or shares of which the trusts hereinbefore declared shall not then have failed or become incapable of taking effect, And every such accruing share shall be held upon the like trusts and subject to the like provisions including this present provision as are herein declared concerning the original share or shares respectively to which it shall so accrue so far as the same trusts and provisions shall be then subsisting and capable of taking effect. IN WITNESS &c.

Proviso substituting children for appointees dying in lifetime of testatrix.

Accruer clause.

XCVII.

WILL of a MARRIED WOMAN (*f*).

THIS IS THE LAST WILL of me W. the wife of H. of &c. I give and bequeath my leasehold shop and premises being No. ——— in ——— Street in the City of ——— whereon I am now carrying on the business of ——— together with the goodwill of the said business and the stock in trade and all furniture and other articles which shall be on the said premises at

Bequest of leasehold shop and business to son.

(*f*) See Married Women's Property Act, 1882, s. 1, subs. 1, p. 148.

the time of my death and all debts belonging to me in respect of my said business to my son A., he paying and discharging the rent and outgoings in respect of the said premises and all debts and liabilities owing by me in respect of my said business. I give to my daughter D. the wife of ———— the sum of £——— Consols now standing in my name, and if at the time of my death there shall not be such a sum of Consols standing in my name then I give to my said daughter such a sum as with any Consols standing in my name shall be equivalent in value to the said sum of £——— Consols, such value to be computed as on the day of my death. And all my real estate and the residue of my personal estate I give devise and bequeath unto my said husband absolutely subject to the payment of my funeral and testamentary expenses and debts (except the said debts in respect of my said business) and the legacies and the annuities if any bequeathed by this my will or any codicil thereto. I APPOINT my said husband executor of this my will. AND I HEREBY REVOKE all former wills and testamentary dispositions made by me. IN WITNESS &c.

Bequest of
sum of
consols to
daughter.

Residue to
husband.

XCVIII.

CODICIL appointing a TRUSTEE and EXECUTOR in the place of a deceased Trustee and Executor, and BEQUEATHING an ANNUITY.

THIS IS A CODICIL to the last will of me J. S. of &c. which will is dated the ——— day of ———. WHEREAS C. whom by my said will I appointed to be one of the trustees and executors thereof has lately died, Now THEREFORE I do hereby appoint D. of &c. to be a trustee and executor of my said will in the place of the said C. deceased, And I declare that my said will shall be read and construed as if the name of the said D. were inserted therein throughout instead of the name of the said C. I

Recital of
death of
trustee.
Appoint-
ment of
new
trustee.

GIVE to my sister ——— an annuity of £50 during her life [for her separate use independently of any husband and so that her receipts alone shall be good discharges for the same], such annuity to commence from the day of my death and to be paid to her without any deduction (except income tax) by equal quarterly payments the first of such payments to be made at the expiration of three calendar months after my death ; Provided always and I hereby declare that if my said sister shall either during my life or after my death become bankrupt or shall at any time assign charge or incumber the said annuity or any part thereof or shall do or suffer anything whereby the said annuity or any part thereof if payable to her absolutely would become payable to any other person or persons then the said annuity shall cease as if my said sister were then dead : And I empower my executors if they shall think fit so to do out of the moneys arising from my residuary estate [to purchase such an annuity as aforesaid in the name of my said sister from the Government or from any public company or] to purchase such a sum of Consolidated £3 per cent. Annuities as will be sufficient by means of the income thereof to pay the said annuity, and such consolidated annuities when purchased shall be a fund to answer the said annuity and on the determination of the said annuity shall sink into and form part of my residuary estate. IN WITNESS &c.

Bequest of
annuity.

Proviso for
cesser on
alienation.

Invest-
ment to
meet
annuity.

XCIX.

DISCLAIMER of Trusteeship Executorship and
Guardianship.

TO ALL TO WHOM THESE PRESENTS SHALL

Recital of will. COME C. of &c. sends greeting. WHEREAS J. S. late of &c. deceased duly made and executed his last will dated &c. and thereby gave devised and bequeathed all his real and personal estate unto B. of &c. and the said C. their heirs executors administrators and assigns respectively upon the trusts thereby declared, and he appointed the said B. and C. executors of his said will and guardians of

Death of testator. his infant children, AND WHEREAS the said J. S. died on the ——— day of ——— without having revoked or

Trustee declines to act. altered his said will, AND WHEREAS the said C. has never proved the said will or administered or in any way inter-meddled with the real or personal estate of the said J. S. or any part thereof or acted or interfered and he declines to act or interfere in the execution of the trusts and powers of the said will as trustee or executor thereof, NOW THESE PRESENTS WITNESS that he the said C. hath disclaimed and doth hereby disclaim All the real and personal estate and effects by the said will given devised or bequeathed to him jointly with the said B., And also the respective offices of trustee and executor of the said will and guardian of the said infant children, And all estates trusts powers authorities rights and privileges whatsoever under the said will. IN WITNESS &c.

C.

RETIREMENT of a TRUSTEE, indorsed on the deed of settlement (g).

TO ALL TO WHOM THESE PRESENTS SHALL COME the within-named B. C. and D. (*trustees*) and the within-named H. and W. his wife (*persons to whom the power of appointing trustees is given*) send greeting. WHEREAS the property now subject to the trusts of the within-written Indenture consists of the within-mentioned freehold farm and hereditaments known as Blackacre Farm and of the within-mentioned leasehold dwelling-house and premises called _____ and of the sum of £_____ secured upon mortgage of certain freehold hereditaments situate at _____ by an Indenture dated &c. and made &c. and of the stocks funds and securities the particulars whereof are specified in the schedule hereto, AND WHEREAS the said B. desires to be discharged from the trusts of the within-written Indenture, AND WHEREAS it is intended by an Indenture bearing even date with these presents and expressed to be made between the said B. C. and D. of the one part and the said C. and D. of the other part that the aforesaid sum of £_____ and the hereditaments upon which the same is secured shall be transferred to the said C. and D. alone (*h*), And it is also intended that the aforesaid stocks funds and securities comprised in the said schedule hereto shall be forthwith transferred into the names of the said C. and D. alone (*h*), NOW THESE PRESENTS WITNESS that the said B. doth hereby declare that he is desirous of being discharged from the trusts of the within-written Indenture and the said C. and D. and the said H. and W. his wife hereby consent to the

Particulars of trust funds.

Trustee desiring to retire. Intention to transfer trust property.

Declaration of retirement.

(g) See Conveyancing Act, 1881, s. 32, p. 282.

(h) The mortgage should be transferred by a separate deed; see Prec. CIII. This and the stocks, &c.,

transferable in books cannot be transferred by a mere declaration; see Conveyancing Act, 1881, s. 34 subs. 3, p. 284.

Declara-
tion vest-
ing certain
of the trust
property
in the
continuing
trustees
alone.

discharge of the said B. AND THESE PRESENTS ALSO WITNESS that in exercise of the power for this purpose given to them by the Conveyancing and Law of Property Act, 1881, they the said B. C. and D. and they the said H. and W. his wife do hereby declare that the said farm and hereditaments known as Blackacre Farm and the said leasehold dwelling-house and premises called ———— and all other property now subject to the trusts of the within-written Indenture, except such property as is excepted from the said power by the same Act, shall vest in the said C. and D. alone (i). IN WITNESS &c.

CI.

APPOINTMENT of NEW TRUSTEES by TENANT for LIFE by
*indorsement on the settlement with declaration
vesting the trust property in them (k).*

Deaths
&c. of
trustees.

Property
subject to
the settle-
ment.

THIS INDENTURE made the ——— day of ——— Between the within-named A. (*tenant for life to whom the power of appointing new trustees is given*) of the one part and E. of &c. F. of &c. and G. of &c. (*new trustees*) of the other part, WHEREAS the within-named B. (*one of the trustees*) many years ago went abroad and is still abroad, and the within-named C. (*another trustee*) died on or about the ——— day of ——— and the within-named D. (*the remaining trustee*) died on the ——— day of ———, AND WHEREAS certain portions of the freehold copyhold and leasehold hereditaments respectively comprised in the within-written Indenture have been sold and with part of the proceeds of sale thereof or with other moneys other hereditaments have been bought and by Indentures dated

(i) The effect of this declaration will be "to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates;" see Convey-

ancing Act, 1881, s. 34, subs. 2, p. 283.

(k) See Conveyancing Act, 1881, ss. 31, 33, 34. If more convenient, this deed can be made annexed to the settlement.

&c. &c. respectively have been settled to the uses and upon the trusts of the within-written Indenture, and with the residue of the said proceeds of sale or with other moneys certain stocks funds and securities mentioned in the schedule hereto have been purchased in the names of the said B. C. and D. or some of them, AND WHEREAS the said A. is desirous of appointing the said E. F. and G. to be trustees of the within-written Indenture in the respective places of the said B. C. and D., AND WHEREAS it is intended that so soon as may be the said E. F. and G. shall be admitted to the copyhold hereditaments now subject to the trusts of the within-written Indenture and that the aforesaid stocks funds and securities comprised in the said schedule hereto shall be transferred into their names (*l*), NOW THIS INDENTURE WITNESSETH that the said A. in exercise of the power for this purpose given to him by the within-written Indenture doth hereby appoint the said E. F. and G. to be trustees of the within-written Indenture in the respective places of the said B. C. and D. AND THIS INDENTURE ALSO WITNESSETH that he the said A. in exercise of the power for this purpose given to him by the Conveyancing and Law of Property Act, 1881, doth hereby declare that the right to admittance to All and singular the copyhold lands and hereditaments now subject to the trusts of the within-written Indenture, And also all and singular the leasehold lands and hereditaments now subject to the trusts of the same Indenture shall vest in the said E. F. and G. (*m*). AND IT IS HEREBY DECLARED that the said E. F. and G. shall stand seised and possessed of the said copyhold and leasehold lands and hereditaments

Intention to appoint new trustees.

Appointment of new trustees.

Vesting declaration.

Declaration of trusts.

(*l*) A vesting order will be required for the transfer of the stocks where no trustee is left to transfer them; see Conveyancing Act, 1881, s. 34, subs. 3, p. 284.

(*m*) See note (*i*), p. 228. The declaration will be ineffectual to vest the legal estate in the copy-

holds in the new trustees; see Conveyancing Act, 1881, s. 34, subs. 3. For this they must be admitted. The declaration should not extend to the freeholds unless the trustees took the legal estate under the settlement.

Appointment of a New Trustee of a Will.

and also of the said stocks funds and securities specified in the said schedule hereto when transferred into their names as aforesaid upon the trusts and with and subject to the powers and provisions in the within-written Indenture respectively declared and contained of and concerning the copyhold and leasehold hereditaments and the stocks funds and securities thereby respectively settled or such of the same uses trusts powers and provisions as may be subsisting and capable of taking effect. IN WITNESS &c.

CII.

APPOINTMENT *of a NEW TRUSTEE of a will by the surviving trustees.*

THIS INDENTURE made the ——— day of ———
 Between B. of &c. and C. of &c. (*present trustees*) of the
 one part and D. of &c. (*new trustee*) of the other part,
 WHEREAS J. S. late of &c. deceased duly made and executed his last will dated &c. and thereby appointed the said B. and C. executors thereof, and after making certain specific bequests and giving certain legacies he gave devised and bequeathed all his real estate and the residue of his personal estate (except such estates as might be vested in him as trustee or mortgagee) unto and to the use of the said B. and C. their heirs executors administrators and assigns respectively upon the trusts therein mentioned, AND
 WHEREAS the said J. S. died on the ——— day of ——— without having revoked or altered his said will save by a codicil dated &c. whereby he revoked one of the aforesaid specific bequests but did not otherwise alter his said will, And the said will and codicil were on the ——— day of ——— duly proved in the ——— Registry of the Probate Division of the High Court of Justice by the said B. and C., AND WHEREAS the property now subject to the trusts of the said will consists of the leasehold dwelling-house and premises called ——— situate at ——— and of the sum of £ ——— secured upon mortgage of

Recital of will.

Death of testator.

Probate of will.

Statement of property.

certain freehold hereditaments situate at _____ by an Indenture dated &c. and made &c. and of the stocks funds and securities the particulars whereof are specified in the schedule hereto, AND WHEREAS the said C. desires to be discharged from the trusts of the said will and it has been agreed to appoint the said D. to be trustee in his place, AND WHEREAS it is intended by an Indenture bearing even date with these presents and expressed to be made between the said B. and C. of the one part and the said B. and D. of the other part that the aforesaid sum of £ _____ and the hereditaments upon which the same is secured shall be transferred to the said B. and D., And it is also intended that the aforesaid stocks funds and securities comprised in the said schedule hereto shall be forthwith transferred into the names of the said B. and D., NOW THIS INDENTURE WITNESSETH that in exercise of the power for this purpose given to them by the Conveyancing and Law of Property Act, 1881, and of every other power enabling them in this behalf, They the said B. and C. do and each of them doth hereby appoint the said D. to be a trustee of the said will of the said J. S. in the place of the said C. so desiring to be discharged as aforesaid. AND THIS INDENTURE ALSO WITNESSETH that in consideration of the premises, They the said B. and C. as trustees do and each of them doth hereby assign unto the said B. and D. their executors administrators and assigns (n) ALL AND SINGULAR the said leasehold dwelling-house and premises called _____ and all other if any the leasehold hereditaments now vested in them the said B. and C. as such trustees as aforesaid, TO HAVE AND TO HOLD the dwelling-house and all other the premises hereby assigned unto the said B. and D. their executors adminis-

Trustee
desiring to
retire.

Intention
to transfer
mortgage,

and other
securities.

Appoint-
ment of
new
trustee.

Assign-
ment of
leasehold.

(n) Lord St. Leonards' Act, 22 & 23 Vict. c. 35, enacts, s. 21, "Any person shall have power to assign personal property, now by law assignable, including chattels real,

directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another."

Transfer of Mortgage to New Trustees.

New
trustees to
hold upon
the trusts
of the will.

trators and assigns for the residue of the term or terms estates and interests now subsisting therein, Upon the trusts hereinafter declared of and concerning the same. AND IT IS HEREBY DECLARED that the said B. and D. their heirs executors administrators and assigns respectively shall stand possessed and seised of the said leasehold dwelling-house and premises and of the said sum of £—— and the hereditaments whereon the same is secured when transferred to them as aforesaid and of the stocks funds and securities specified in the said schedule hereto when transferred into their names as aforesaid upon the trusts and with and subject to the powers provisions and declarations in the said will of the said J. S. declared and contained of and concerning his residuary estate. IN WITNESS &c.

The schedule to the above-written Indenture.

(*List of stocks &c.*)

CIII.

TRANSFER of MORTGAGE on appointment of a new trustee.

Recital of
mortgage.

THIS INDENTURE made the —— day of —— Between B. of &c. and C. of &c. (*present trustees*) of the one part and the said B. and D. of &c. (*new trustee*) of the other part, WHEREAS by an Indenture dated &c. and made between A. (*mortgagor*) of the one part, and the said B. and C. of the other part the said A. granted unto and to the use of the said B. and C. their heirs and assigns the freehold messuage and hereditaments therein described by way of mortgage for securing the repayment of the sum of £—— advanced to the said A. by the said B. and C. out of moneys belonging to them on a joint account with interest as therein mentioned, AND WHEREAS the said principal sum of £—— together with interest thereon since the —— day of —— is still owing on the

Amount
owing.

security of the aforesaid Indenture, And the same sum and interest now belongs to the said B. and D. on a joint account (o), NOW THIS INDENTURE WITNESSETH that in consideration of the premises They the said B. and C. as mortgagees do and each of them doth hereby assign <sup>Assign-
ment of
debt.</sup> unto the said B. and D. their executors administrators and assigns ALL THAT the aforesaid sum of £—— now owing on the security aforesaid and all interest now due as aforesaid and hereafter to become due for the same and the benefit of the power of sale and of all other powers and provisions in the said Indenture of the —— day of —— contained for securing payment of the said sum of £—— and interest, TO HAVE AND TO HOLD the said sum of £—— and premises hereby assigned unto the said B. and D. their executors administrators and assigns. AND THIS INDENTURE ALSO WITNESSETH that in consideration of the premises They the said B. and C. as mortgagees do and each of them doth hereby grant <sup>Grant of
premises.</sup> unto the said D. and his heirs (p) ALL AND SINGULAR the messuage and hereditaments comprised in the said Indenture of the —— day of —— and thereby granted by way of mortgage, TO HAVE AND TO HOLD the hereditaments and premises hereby granted UNTO the said D. and his heirs TO THE USE of the said B. and D. their heirs and assigns, Subject to the right or equity of redemption if any now subsisting under the said Indenture of the —— day of —— (q). IN WITNESS &c.

(o) See Conveyancing Act, 1881, s. 61, p. 299.

(p) This is the mode by which under the Statute of Uses a person conveys land to himself jointly with another person, although it has been provided by s. 50 of the Conveyancing Act, 1881, that such a conveyance may be made in like manner

as by one person to another, see note to that section, p. 295.

(q) The deed should contain no reference to the settlement or will under which the mortgage money is held, so as to avoid bringing the trusts upon the title to the mortgaged property.

CIV.

APPOINTMENT of a SEPARATE SET of TRUSTEES (g).

Recital
of will
settling
trust
funds.

Codicil
settling
her share
upon a
married
daughter.

Death of
testator.

Probate.

THIS INDENTURE made the ——— day of ——— Between B. of &c. and C. of &c. of the one part and E. of &c. and F. of &c. of the other part, WHEREAS J. S. late of &c. deceased duly made and executed his last will dated &c. and thereby appointed the said B. and C. executors thereof and after making certain specific bequests and giving certain legacies he gave devised and bequeathed all his real estate and the residue of his personal estate unto and to the use of the said B. and C. their heirs executors administrators and assigns respectively upon trust to sell the same or such parts thereof as should not consist of moneys or of the securities thereafter authorised and out of the proceeds of sale and out of such moneys and securities to pay his funeral and testamentary expenses and debts and legacies and to stand possessed of the residue of his estate after answering the purposes aforesaid Upon trust after the death of W. his wife (who predeceased him) for all his children living at his decease who being sons attained the age of twenty-one years or being daughters attained that age or married in equal shares, AND WHEREAS the said testator duly made and executed a codicil to his said will which codicil bore date the ——— day of ——— and thereby after reciting that D. one of his daughters had since the date of his said will intermarried with and was then the wife of H. the said testator declared that as to the share in the residue of his estate and effects by his said will given to his said daughter D. his trustees should stand possessed thereof upon the trusts in his said codicil declared for the benefit of his said daughter and her husband and children, AND WHEREAS the said testator died on the ——— day of ——— without having revoked or altered his said will save by the said codicil and without having revoked or altered the said codicil, And the said

(g) See Conveyancing Act, 1882, s. 5, p. 320.

will and codicil were on the ——— day of ——— duly proved in the ——— Registry of the Probate Division of the High Court of Justice by the said B. and C., AND WHEREAS the said C. desires to be discharged from the trusts of the said will and codicil, AND WHEREAS upon the appointment of a fresh trustee in the place of the said C. it has been agreed to appoint a separate set of trustees, that is to say the said E. and F., of the share of the said testator's estate and effects directed to be held upon trust for the benefit of the said D. and her husband and children as aforesaid, AND WHEREAS by virtue of the power of apportionment (r) given to his said trustees by the said will of the said testator the said B. and C. have apportioned the stocks funds and securities mentioned in the schedule hereto as the share of the said D. in the said residuary estate and effects of the said testator, And it is intended that the same stocks funds and securities shall be forthwith transferred into the names of the said E. and F., NOW THIS INDENTURE WITNESSETH that in exercise of the power for this purpose given to them by the Conveyancing Acts, 1881, 1882, and of every other power enabling them in this behalf, They the said B. and C. do and each of them doth hereby appoint the said E. and F. to be trustees of the said share of the said D. in the respective places of the said B. and C. AND IT IS HEREBY DECLARED that the said E. and F. their executors administrators and assigns shall stand possessed of the said stocks funds and securities mentioned in the said schedule hereto when transferred into their names as aforesaid Upon the trusts and with and subject to the powers and provisions in the said codicil of the said J. S. declared and contained of and concerning the share of the said D. in his residuary estate and effects. IN WITNESS &c.

Trustee
desiring
to be dis-
charged.

Intention
to appoint
a separate
set of
trustees
for the
daughter's
share.

Apportion-
ment of
certain
stocks for
daughter's
share.

Appoint-
ment of
separate
set of
trustees.

Schedule of Stocks &c.

(r) See p. 216.

CV.

DEED of RELEASE and INDEMNITY to TRUSTEES.

THIS INDENTURE made the ——— day of ———
 Between H. of &c. J. of &c. K. of &c. L. of &c. and W. his
 wife (*releasors*) of the one part and B. of &c. and C. of &c.
 (*trustees*) of the other part, WHEREAS &c. (*recite fully the
 deeds and wills relating to the trust, and the subsequent
 transactions with the trust property, especially any breach
 of trust which may have been committed or other matter
 in respect of which a release is particularly needed*), AND
 WHEREAS it has been agreed that the said parties hereto
 of the first part shall execute such release and indemnity
 to the said B. and C. and to the estate of the said D. (*a
 deceased trustee*) as are hereinafter contained, NOW THIS
 INDENTURE WITNESSETH that in pursuance of the
 said agreement and in consideration of the premises They
 the said H. J. K. L. and W. his wife do and each and every
 of them doth hereby release and discharge the said B. and
 C. and each of them and their and each of their heirs
 executors and administrators estates and effects and also
 the estate and effects of the said D. deceased of and from
 all actions accounts reckonings charges claims and de-
 mands whatsoever for or on account of the said sum of
 £——— Consolidated Annuities &c. &c. (*property specifi-
 cally mentioned in the instrument creating the trust*)
 and all other the real and personal estate at any time com-
 prised in or subject to the trusts of the aforesaid (*In-
 denture or Will*) and the rents profits dividends and
 income thereof or any part thereof respectively, and in
 particular on account of &c. (*any breach of trust*) or any
 act deed or thing whatsoever done or omitted to be done
 or suffered by the said B. C. and D. or any or either of
 them in or about the execution of the trusts of the said
 (*Indenture or Will*) or in anywise relating to the premises.
 AND THIS INDENTURE ALSO WITNESSETH that
 in further pursuance of the said agreement and in con-

Recitals of
documents
and of
dealings
with trust
funds.

Agree-
ment to
give a
release.

Release to
trustees.

sideration of the premises They the said H. J. K. L. and W. do hereby jointly and every one of them doth hereby separately covenant with the said B. and C. and each of them that they the said covenanting parties or some or one of them or the heirs executors or administrators of them or some or one of them will at all times hereafter keep indemnified the said B. and C. and each of them their and each of their heirs executors and administrators estates and effects, and the estate and effects of the said D. deceased, from and against all actions accounts reckonings charges claims and demands whatsoever for or on account of the said sum of £—— Consolidated Annuities &c. &c. and all other the real and personal estate at any time comprised in or subject to the trusts of the said (*Indenture or Will*) or any of them or any part thereof, and the dividends or income thereof or of any of them or of any part thereof, and in particular on account of &c. (*any breach of trust*), or any act deed or thing whatsoever done or omitted to be done or suffered by the said B. C. and D. or any or either of them in or about the execution of the trusts of the said (*Indenture or Will*) or in anywise relating to the premises. IN WITNESS &c.



PART II.

CONVEYANCING ACTS, 1881, 1882.

SETTLED LAND ACT, 1882.

SOLICITORS REMUNERATION ACT, 1881.



CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

44 & 45 VICT. C. 41.

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes. 44 & 45
Vict. c. 41,
ss. 1, 2.
[22nd August, 1881.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I.—PRELIMINARY.

PRE-
LIMINARY.

1.—(1). This Act may be cited as the Conveyancing and Law of Property Act, 1881. Short
title; com-
mence-
ment;
extent.

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

(3.) This Act does not extend to Scotland.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt and any thing in action, and any other right or interest: Inter-
pre-
tation of
property,
land, &c.

(ii.) Land, unless a contrary intention appears, includes

44 & 45
 Vict. c. 41,
 s. 2.

land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land :

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income :

(iv.) Manor includes lordship, and reputed manor or lordship :

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property ; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance :

(vi.) Mortgage includes any charge on any property for securing money or money's worth ; and mortgage money means money, or money's worth, secured by a mortgage ; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property ; and mortgagee includes any person from time to time deriving title under the original mortgagee ; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property :

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum ; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof :

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property ; and purchase, unless a contrary intention appears, has a meaning

corresponding with that of purchaser ; but sale means only a sale properly so called :

44 & 45
Vict. c. 41,
ss. 2, 3,

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise ; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium or fore-gift :

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings ; and a building lease is a lease for building purposes or purposes connected therewith :

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes :

(xii.) Will includes codicil :

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament :

(xiv.) Securities include stocks, funds, and shares :

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy ; and bankrupt has a meaning corresponding with that of bankruptcy :

(xvi.) Writing includes print ; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print :

(xvii.) Person includes a corporation :

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

II.—SALES AND OTHER TRANSACTIONS.

SALES AND
OTHER
TRANSACTIONS.

Contracts for Sale (a).

3.—(1.) Under a contract to sell and assign a term of

Contracts for sale.

(a) See note (i) to p. 6.

44 & 45
Vict. c. 41,
s. 3.

Applica-
tion of
stated
conditions
of sale to
all pur-
chases.

years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion (b).

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(3.) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed (c); and he shall assume, unless the contrary appears (d), that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

(4.) Where land sold is held by lease (not including underlease), the purchaser shall assume, unless the contrary appears (d), that the lease was duly granted; and, on pro-

(b) This supplements the Vendor and Purchaser Act, 1874, s. 2, first rule, which provides against the title to the freehold being called for, see p. 6.

(c) The first part of this subsection sufficiently provides against any requisition in respect of the earlier

title, and renders unnecessary the condition which used to be inserted to that effect.

(d) The latter part of this subsection and also subsections 4 and 5 are weakened by the insertion of the words "unless the contrary appears," and consequently the

duction of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

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Vict. c. 41,
s. 3.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears (e), that

usual conditions of sale providing that documents twenty years old shall be conclusive evidence of the matters recited therein and that the leases and under leases and receipts for rent shall be conclusive evidence of the title of the lessors and of performance of the lessees' covenants cannot safely be dispensed with, see the 6th and 7th conditions of sale p. 3. At the same time it should be observed that no condition of sale couched in general terms can in every case prevent the purchaser from proving the contrary *aliunde*. In the case of *Darlington v. Hamilton*, Kay 550, it was even held that "it is quite clear that whatever may be the terms of the condition of sale if the purchaser obtain information *aliunde* that the title of the vendor is not clear and distinct he has a right to insist on the objection." This was apparently carrying the doctrine too far, see *Best v. Hamand*, L. R. 12 Ch. D. 1. But in the recent case of *Re Banister*, 12 Ch. D. 131, it was laid down by the Court of Appeal that a condition of sale is bad as misleading, 1. if it requires the purchaser to assume what the vendor knows to be false; 2. if it states that the state of the title is not accurately known when in fact it is known to the vendor. It is perhaps somewhat difficult to reconcile this decision,

which seems to amount to this that a vendor shall not take advantage of his superior knowledge to commit a fraud, with the decision in the case of *Best v. Hamand*, *supra*, also decided by the Court of Appeal, but by three different judges, in which it was held that a railway company could under a condition of sale force a purchaser to accept the title to what they required him to assume was superfluous land which they had a right to sell to him, when as a matter of fact they had never offered it in the first instance to the original owner in accordance with s. 128 of the Lands Clauses Consolidation Act, 1845, and consequently had no power to sell it to any one else. The case of *Lawrie v. Lees*, L. R. 7 Ap. Ca. 24, decides that a condition of sale, to the effect that the production of the receipt for the last rent due shall be conclusive evidence of the performance of the lessee's covenants or of the waiver of any breach, binds a purchaser where there has been a breach of covenant but there is nothing to show that the landlord intends to take advantage of it; in fact in the case in question he not only waived but approved of the breach. This case seems consistent with that of *Re Banister*.

(e) See note (d), p. 244.

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 s. 3.

the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser (*f*).

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense (*g*).

(8.) This section applies only to titles and purchasers on

(*f*) This clause may be supplemented by the 8th condition of sale, see p. 4.

(*g*) See p. 2, cl. 3.

sales properly so called, notwithstanding any interpretation in this Act.

44 & 45
Vict. c. 41,
ss. 3—5.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee (*h*), for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

Comple-
tion of
contract
after
death.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

Discharge of Incumbrances on Sale (i).

5.—(1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court,

Discharge
of incum-
brances on
sale.
Provision

(*h*) In this event the realty has become converted into personalty. But in most cases the concurrence of the heir or devisee will be required by the purchaser to prevent any question afterwards arising as to

whether the contract was enforceable against the heir or devisee.

(*i*) This section apparently gives the Court the widest possible power of discharging incumbrances. But it is not to be expected that the

44 & 45
 Vict. c. 41,
 s. 5.

by Court
 for incum-
 brances,
 and sale
 freed
 therefrom.

or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

Court will use these powers except where owing to the mortgagor being not *sui juris* or being out of the kingdom, or owing to some other cause, there is a difficulty in obtaining a discharge from him in the usual way, i.e., by giving six months' notice to redeem, or by paying six months' interest. The power given

to the Court does not extend to the case where a part only of the mortgaged property is sold producing enough to pay off part of the mortgage. For form of order under this section, see *Patching v. Bull*, 30 W. R. 244; *Dickin v. Dickin*, 30 W. R. 887; W. N. 1882, p. 113.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made. 44 & 45
Vict. c. 41,
ss. 5, 6.

General Words (j).

General words.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof. General words in conveyances of land, buildings, or manor.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to,

(j) This section does not comprise rights or easements formerly existing but extinguished by the union of the dominant and the servient tenements in the hands of one owner, such as a convenient path from one piece of land across the adjoining piece of land, but not of course a way of necessity which must always pass with any land sold. If, therefore, the purchaser is to have any such easement over any land retained by the vendor it should be specially granted in the conveyance. The form of general words in use before this Act frequently included "all

rights easements and appurtenances to the hereditaments hereby granted belonging or in anywise appertaining or with the same or any part thereof now or heretofore held occupied or enjoyed." This was more satisfactory from the purchaser's point of view than the rights and easements given to him by this section, but it might afterwards be found to have included more than the vendor intended to sell, see *Brett v. Clowser*, L. R. 5 C. P. D. 376; *Barkshire v. Grubb*, 18 Ch. D. 616. See also *Willis v. Watney*, 30 W. R. 424.

^{44 & 45}
Vict. c. 41,
^{ss. 6, 7.} the land, houses or other buildings conveyed, or any of them, or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rents-charge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

*Covenants
for title.*

Covenants for Title.

*Covenants
for title to
be implied.*

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this

Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:—

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

44 & 45
Vict. c. 41,
s. 7.

On convey-
ance for
value, by
beneficial
owner.

That, notwithstanding any thing by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise

Right to
convey.

Quiet en-
joyment.

44 & 45
Vict. c. 41,
s. 7.

Freedom
from in-
cum-
brance.

Further
assurance.

than by purchase for value ; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person right-fully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value ; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or right-fully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required :

(in which covenant a purchase for value shall not be

deemed to include a conveyance in consideration of marriage):

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

44 & 45
Vict. c. 41,
s. 7.

On convey-
ance of
leaseholds
for value,
by benefi-
cial owner.
Validity of
lease.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed, and performed up to the time of conveyance:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On mort-
gage, by
beneficial
owner.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, con-

Right to
convey.

Quiet en-
joyment.

44 & 45
Vict. c. 41,
s. 7.

Freedom
from in-
cum-
brance.

Further
assurance.

trary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by

him or them or any of them shall be reasonably required :

44 & 45
Vict. c. 41,
s. 7.

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely) :

On mort-
gage of
leaseholds,
by benefi-
cial owner.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance ; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them :

Validity of
lease.

Payment
of rent and
perform-
ance of
covenants.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely) :

On settle-
ment.

44 & 45
Vict. c. 41,
s. 7.

For
further
assurance,
limited.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required :

On convey-
ance by
trustee or
mortgagee.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic (*k*) so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely) :

Against
incum-
brances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(*k*) The usual way of conveying property of a lunatic is for the lunatic himself to convey by deed sealed and delivered in his name and on his behalf by the committee, and in like manner to covenant for

title, not for the committee to convey and covenant for title on behalf of the lunatic, see Prec. XXVIII., and see also *Laurie v. Lee*, L. R. 7 Ap. Ca. 24.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

44 & 45
Vict. c. 41,
s. 7.

(3.) Where a wife (*l*) conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a

(*l*) On a conveyance by a married woman not entitled for her separate use it was usual for the husband to give covenants for title to the effect that notwithstanding anything by him or his wife or her ancestors or testators done or suffered he and she had good right to convey &c. Covenants on the part of the wife were not usually given. This section provides for the implication of four covenants, 1. by the wife as conveying as beneficial owner, 2. by the husband as directing her conveyance, 3. by the husband in the same terms as that of the wife, 4. by the husband as conveying, see Clerke

& Brett's Conv. Act, 2nd ed. p. 56. The covenant No. 1 implied on the part of the wife will by the Married Women's Property Act, 1882, sec. 1, subs. 3, bind her separate property unless the contrary be shown. It may therefore be that henceforth married women will object to give the covenant on a conveyance of property to which they are entitled not for their separate use, and the conveyance may then be framed under subs. 2, by making the wife convey by the direction of the husband as beneficial owner and the husband convey as beneficial owner, see Prec. XIII., p. 21.

^{44 & 45}
^{Vict. c. 41,}
^{s. 7.} deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land (n).

(6.) The benefit of a covenant implied as aforesaid shall

(n) A deed conferring the right of admittance to copyhold land, such as a bargain and sale by trustees of a will in pursuance of the directions in the will contained for sale of the copyholds, see *Prec. XIX.*, an appointment of copyholds by the trustee of a bankrupt under s. 22 of the Bankruptcy Act, 1869, a conveyance of copyholds by a person appointed to convey under s. 28 of the Trustee Act, 1850, or by a tenant for life under the Settled Land Act, 1882, see *Prec. XXII.*, requires no surrender. The purchaser can be admitted forthwith. A covenant to surrender copyholds which is the ordinary mode of conveying requires to be followed by a surrender and does not confer any right to admittance, and if the vendor dies before surrendering the purchaser cannot be admitted until the vendor's heir or devisee has first been admitted and then surrendered, or until an order of the Court has been obtained vesting the right to admittance in the purchaser. It would seem therefore that in a covenant to surrender copyholds the covenants for title will not be implied by the use of the words "as benefi-

cial owner," see *Clerke & Brett's Conv. Act*, 2nd ed. p. 57. Moreover if they could be implied they would not be appropriate. The covenants for title given on a covenant to surrender copyholds are to the effect that notwithstanding anything by the vendor or his ancestors or testators done or suffered the vendor hath good right to surrender the copyholds. Now the covenants given by the Conveyancing Act, 1881, make the vendor covenant that he has full power to convey, and by s. 2, subs. 5, conveyance includes a covenant to surrender made by deed, but not the surrender itself. Consequently if the covenant for title could be implied it would merely be that the vendor covenanted that notwithstanding &c., he had full power to covenant to surrender. Any one has power to covenant to surrender or to do anything else. The point is whether he can perform his covenant. For the above reasons covenants for title have been inserted in the precedents of covenants to surrender copyholds contained in the first part of this book, as being the safer course.

be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

44 & 45
Vict. c. 41,
ss. 7—9.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(8.) This section applies only to conveyances made after the commencement of this Act.

Execution of Purchase Deed.

*Execution
of purchase
deed.*

8.—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

*Rights of
purchaser
as to exe-
cution.*

(2.) This section applies only to sales made after the commencement of this Act.

Production and Safe Custody of Title Deeds (o).

*Production
and safe
custody of
title deeds.*

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of

Acknow-

(o) This section provides for the giving of an acknowledgment which is equivalent to the covenant for production and for furnishing copies of deeds, and an undertaking which is equivalent to the covenant for safe custody thereof. Both covenants used to be given by all grantors except trustees and mortgagees, who only gave the former covenant. In future therefore both

the acknowledgment and the undertaking will be given by all persons except trustees and mortgagees, who will only give the acknowledgment. It is to be observed that the acknowledgment or undertaking can only be given by the person retaining possession of the documents: consequently where a mortgagor is selling part of the lands comprised in a mortgage, and the mortgagee

44 & 45
Vict. c. 41,
s. 9.

ledgment
of right to
produc-
tion, and
under-
taking for
safe cus-
tody of
docu-
ments.

the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

- (i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorized in writing; and
- (ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any

gives the acknowledgment, the mortgagor will have to give a covenant for the safe custody, as in Prec. XXIV., p. 41 A person

having a right of production of documents has also a right to take copies of them, *Pratt v. Pratt*, 30 W. R. 637.

court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

44 & 45
Vict. c. 41,
s. 9.

- (iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual pos-

44 & 45
 Vict. c. 41,
 ss. 9, 10.

essor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

LEASES.

III.—LEASES.

Rent and
 benefit of
 lessee's
 covenants
 to run with
 reversion.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be

annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

44 & 45
Vict. c. 41,
ss. 10—12.

(2.) This section applies only to leases made after the commencement of this Act.

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Obligation
of lessor's
covenants
to run with
reversion.

(2.) This section applies only to leases made after the commencement of this Act.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the several parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to

Apportionment
of conditions
on
severance,
&c.

44 & 45
Vict. c. 41,
ss. 12—14.

which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

On sub-
demise,
title to
leasehold
reversion
not to be
required.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion (*p*).

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

Forfeiture.

Forfeiture (q).

Restric-
tions on
and relief
against
forfeiture
of leases.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the

(*p*) See s. 3, subs. 1, and note (*b*),
p. 244.

(*q*) See *Quilter v. Mapleson*, Soli-
citors' Journal, 1882, p. 529.

Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

44 & 45
Vict. c. 41,
s. 14.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs, and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

- (i.) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or
- (ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to

44 & 45
 Vict. c. 41,
 ss. 14—16.

or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

MORT- GAGES.

IV.—MORTGAGES.

Obligation
 on mort-
 gagee to
 transfer
 instead of
 re-convey-
 ing.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly (r).

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Power for
 mortgagor
 to inspect
 title deeds.

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or

(r) See Prec. LVI. Before this Act the mortgagee could not be compelled to transfer his mortgage to a third person. This section is

supplemented by s. 12 of the Conveyancing Act, 1882, p. 325. See *Terran v. Smith*, L. R. 20 Ch. D. 724.

abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee. 44 & 45
Vict. c. 41,
ss. 16—18.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem. Restriction on consolidation of mortgages.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them (s).

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Leases.

Leases.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized (t). Leasing powers of mortgagor and of mortgagee in possession.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorizes are—

- (i.) An agricultural or occupation lease for any term not exceeding twenty-one years; and
- (ii.) A building lease for any term not exceeding ninety-nine years.

(s) See Prec. XLI., p. 80, and *Harter v. Colman*, L. R. 19 Ch. D. 630.

(t) This renders it possible for the mortgagor to grant valid leases while

in possession. If this power is excluded under subs. 13 as being too large, a special power to lease should be given as in Prec. XLI., p. 80.

44 & 45
Vict. c. 41,
s. 18.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect, within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connexion with building purposes.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this

section may be enforced by or against every person on whom the lease if granted would be binding.

44 & 45
Vict. c. 41,
ss. 18, 19.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Sale; Insurance; Receiver; Timber.

*Sale;
insurance;
receiver;
timber.*

19.—(1.) A mortgagee, where the mortgage is made by

44 & 45
Vict. c. 41,
s. 19.

Powers in-
cident to
estate or
interest of
mortgagee.

deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

- (i.) A power (*u*), when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and
- (ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
- (iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and
- (iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time

(*u*) The power of sale here given is rather more favourable to the mortgagee than that commonly inserted in the mortgage deed, inasmuch as it gives him power to sell after three months' notice instead of

six, or if interest is in arrear for two months instead of three. Compare the ordinary power of sale in *Prec. XLI.*, p. 78, with s. 20 of this Act; see *Warner v. Jacob*, L. R. 20 Ch. D. 220.

not exceeding twelve months from the making of the contract. 44 & 45
Vict. c. 41,
ss. 19—21.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

20. A mortgagee shall not exercise the power of sale conferred by this Act (x) unless and until— Regulation of
exercise of
power of
sale.

- (i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service ; or
- (ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due ; or
- (iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, in- Convey-
ance,
receipt, &c.
on sale.

(x) See p. 78.

^{44 & 45}
 Vict. c. 41,
 s. 21.

terests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power (y).

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof (z).

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money (z).

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the

(y) See p. 79.

(z) See p. 79.

power of sale conferred by this Act or of any trust connected therewith (a). 44 & 45
Vict. c. 41,
ss. 21—23.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

22.—(1.) The receipt in writing of a mortgagee (b) shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage. Mort-
gagee's
receipts,
discharges,
&c.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured. Amount
and appli-
cation of
insurance
money.

(a) See p. 80.

(b) See p. 79.

44 & 45
 Vict. c. 41,
 ss. 23, 24.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

- (i.) Where there is a declaration in the mortgage deed that no insurance is required:
- (ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:
- (iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorized to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage (c).

Appoint-
 ment,
 powers,
 remunera-
 tion, and
 duties of
 receiver.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the

(c) See note (i), p. 90.

name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

44 & 45
Vict. c. 41,
s. 24.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time, by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

- (i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
- (ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

44 & 45
 Vict. c. 41,
 ss. 24, 25.

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage ;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

*Action
 respecting
 mortgage.*

Sale of
 mortgaged
 property in
 action for
 fore-
 closure, &c.

Action respecting Mortgage.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money (*d*), may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may,

(*d*) Six months was the usual time given to redeem. In *Union Bank of London v. Ingram*, L. R. 20 Ch. D. 463, it was held that under this section the Court has jurisdiction to order a sale of mortgaged property in a foreclosure or redemption action

at any time before the action is concluded by foreclosure absolute. See *Weston v. Davidson*, W. N. 1882, p. 28, *Woolley v. Colman*, L. R. 21 Ch. D. 169, *Gibbs v. Haydon*, 30 W. R. 726, as to right of tenant in common who has mortgaged to a partition or sale:

on t
give
may
at

by the person expressed to join therein as
effect following (namely) :

44 & 45
Vict. c. 41,
ss. 27—29.

the mortgagor will, on the next of the days by
deed fixed for payment of interest,
theree the stated mortgage money,
if as then remains unpaid, with
on the unpaid part thereof, in
rate stated in the mortgage
er, as long as the mortgage
remains unpaid, pay to
sum, or the unpaid part
he successive days by
ment of interest.

- (6.) The e
Schedule to th.
(7.) This section.

the form (C.), it
as a statutory
mortgage, and

V.—STATUTORY.

26.—(1.) A mortgage of freehold
made by a deed expressed to be made
mortgage, being in the form given in Part
Schedule to this Act, with such variations and
any, as circumstances may require, and the provision
this section shall apply thereto.

ry Implied
covenants,
joint and
veral.

(2.) There shall be deemed to be included, and there
shall by virtue of this Act be implied, in the mortgage
deed—

First, a covenant with the mortgagee by the person
expressed therein to convey as mortgagor to the effect
following (namely) :

That the mortgagor will, on the stated day, pay to
the mortgagee the stated mortgage money, with
interest thereon in the meantime, at the stated rate,
and will thereafter, if and as long as the mortgage
money or any part thereof remains unpaid, pay
to the mortgagee interest thereon, or on the unpaid
part thereof, at the stated rate, by equal half-yearly
payments, the first thereof to be made at the end

(c) The statutory forms provided in very simple cases
by this Act may perhaps be of service

44 & 45
Vict. c. 41,
ss. 26, 27.

of six calendar months from the day stated for payment of the mortgage money :

Secondly, a proviso to the effect following (namely) :

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

**Forms of
statutory
transfer of
mortgage
in
schedule.**

27.—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely) :

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee :

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with

the transferee by the person expressed to join therein as covenantor to the effect following (namely) :

44 & 45
Vict. c. 41,
ss. 27—29.

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.), it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto, accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

29. A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such

Form of
re-convey-
ance of
statutory
mortgage
in schedule

44 & 45 variations and additions, if any, as circumstances may
 Vict. c. 41, require.
 ss. 29—31.

TRUST AND
 MORTGAGE
 ESTATES
 ON DEATH.
 Devolution
 of trust
 and mort-
 gage
 estates on
 death.

VI.—TRUST AND MORTGAGE ESTATES ON DEATH (*f*).

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition (*g*), devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

37 & 38 (2.) Section four of the Vendor and Purchaser Act, 1874,
 Vict. c. 78. and section forty-eight of the Land Transfer Act, 1875, are
 38 & 39 hereby repealed.
 Vict. c. 87.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

TRUSTEES
 AND EXE-
 CUTORS.
 Appoint-
 ment of

VII.—TRUSTEES AND EXECUTORS.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or

(*f*) See Prec. XLIV., p. 84, and trust and mortgage estates may be
 note (*e*), p. 217. omitted from wills.

(*g*) For the future the devise of

remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument (h), if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid (i).

44 & 45
Vict. c. 41.
s. 31.

new
trustees,
vesting of
trust pro-
perty, &c.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(h) See pp. 161, 198. In *Re Oakden's Trusts*, 26 Sol. Jour. 563, Chitty J. said that petitions for appointment of new trustees would

be dismissed with costs, where this section applies. See also *Re Gibbon's Trusts*, 30 W. R. 287.

(i) See *Proc. CL, CIL*, pp. 228, 230.

44 & 45
 Vict. c. 41,
 ss. 31—33.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

Retire-
 ment of
 trustee.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place (*k*).

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Powers of
 new
 trustee ap-
 pointed
 by Court.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance,

(*k*) See *Proc. C.*, p. 227.

or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

44 & 45
Vict. c. 41,
ss. 33, 34.

(2.) This section applies to appointments made either before or after the commencement of this Act.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right (1).

Vesting of
trust pro-
perty in
new or
continuing
trustees.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the

(1) This section will be of service where there is a person capable of appointing new trustees, such as a tenant for life, and the last surviving trustee is under some disability or abroad, in which case a vesting order under the Trustee Act, 1850, would have been necessary for all the trust property. The effect of the section is however much narrowed by the exceptions contained in subs. 3, especially as settlements of personalty consist for the most part of money invested upon mortgages or in stocks transferable in the books of the

company. For these a vesting order will still be required if there is no person capable of transferring them in the usual way. The legal estate in copyholds likewise cannot be transferred under this section, but it seems that the right to admittance would be given in like manner as by a conveyance under s. 28, Trustee Act, 1850, see *Proc. CI.* Where there is any trustee remaining it will usually be found more convenient for him to transfer all the trust property in the usual way, see *Proc. CII.*, p. 230.

44 & 45
 Vict. c. 41,
 ss. 31—33.

(6.) The provisions of this section apply to a trustee in a will but dying before the testator to a continuing trustee in a will, if willing to act in the will, this section.

(7.) This section applies to a trustee if the intention is not expressed in the trust, and shall have effect in any instrument and to any

(8.) This section applies to a trustee at or after the commencement

Retire-
 ment of
 trustee.

32.—(1.) Where a trustee dies or retires from the trust, and if any, as is empowered by the discharge of the co-trustees and the desirous of being retired from the trust, therefrom unappointed in

(2.) Any trustee appointed in the trust property executed or

(3.) The trustee appointed in the trust property executed or

(4.) The trustee appointed in the trust property executed or

Powers of
 new
 trustee ap-
 pointed
 by Court.

3.
 cer
 of
 at

or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

11 & 12
Vict. c. 41,
ss. 33, 34.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate or interest, or right (1).

Vesting of
trust prop-
erty in
new or
continuing
trustees.

(2.) Where a deed by which a continuing trustee is discharged under this Act contains such a declaration as is mentioned in this section mentioned by the appointor and continuing trustees, and by the other persons, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the

(1) This section will be of service

where a power is given to the appointor to appoint a new trustee, and the deed creating the trust contains a declaration that the estate or interest in the land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate or interest, or right (1).

44 & 45 trust, the estate, interest, or right to which the declaration
 Vict. c. 41, relates.
 ss. 34—36.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust (*m*), or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

Power for trustees for sale to sell by auction, &c. 35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

Trustees' receipts. 36.—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or

(*m*) A mortgage should be transferred by a separate deed, see *Prec.* CIII., p. 232.

effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

44 & 45
Vict. c. 41
ss. 36—38.

(2.) This section applies to trusts created either before or after the commencement of this Act.

37.—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

Power for
executors
and
trustees to
compound,
&c.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

38.—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the

Powers to
two or

44 & 45
Vict. c. 41,
ss. 38—41.
more exe-
cutors or
trustees.

contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

MARRIED WOMEN.

Power for
Court to
bind in-
terest of
married
woman.

VIII.—MARRIED WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit (*n*), by judgment or order, with her consent, bind her interest in any property.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

Power of
attorney
of married
woman.

40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

(2.) This section applies only to deeds executed after the commencement of this Act.

INFANTS.

IX.—INFANTS.

Sales and
leases on
behalf of
infant
owner.
40 & 41
Vict. c. 18.

41.—Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877 (*o*).

(*n*) Before this Act her interest could not be bound even though for her own benefit, *Robinson v. Wheelwright*, 21 Beav. 214, 6 D. M. & G. 535. As to what the Court will consider to be for her benefit, see *Hodges v. Hodges*, L. R. 20 Ch. D. 749,

see also *Re Lillwall's Settlement*, 30 W. R. 243, *Re Landfield's Settled Land*, *ibid.* 377, *Tamplin v. Miller*, *ibid.* 422.

(*o*) This is now provided for by the Settled Land Act, 1882, ss. 59, 60.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply (*p*).

44 & 45
Vict. c. 41,
s. 42.

Management of
land and
receipt and
application of
income
during
minority.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut

(*p*) This section gives to trustees the powers of management during a minority hitherto usually inserted in the settlement. But it is not all trustees who will have this power: they must be trustees with power of sale, which will probably be the case in settlements made before the commencement of the Settled Land Act, 1882, or with power of consenting to a sale, or they must be trustees ap-

pointed for this purpose by the settlement. It will be important therefore in all settlements made hereafter whether by deed or will to declare that the trustees thereby appointed and all future trustees shall be the trustees thereof for the purposes of this Act; see Prec. XC., p. 198, and Prec. XCIII., p. 212; see also note to s. 2, subs. 8, of the Settled Land Act, 1882, p. 330.

44 & 45
Vict. c. 41,
s. 42.

timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

- (i.) If the infant attains the age of twenty-one years, then in trust for the infant;
- (ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but—
- (iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or

tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

44 & 45
Vict. c. 41,
ss. 42, 43.

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not (q).

Applica-
tion by
trustees of
income of
property
of infant
for main-
tenance,
&c.

(q) This section is an amplification of the 26th sect. of Lord Cran-

44 & 45
 Vict. c. 41.
 ss. 43, 44.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

**RENT-
 CHARGES
 AND OTHER
 ANNUAL
 SUMS.**

X.—RENT-CHARGES AND OTHER ANNUAL SUMS (r).

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual

worth's Act, 23 & 24 Vict. c. 145, by this Act repealed. It provides for the application of the income of the property, whether the infant is absolutely or contingently entitled to the property, instead of "the whole or any part of the income to which such infant may be entitled in respect of such property," as provided by Lord Cranworth's Act and interpreted to mean income to which the infant was contingently entitled, *Re Cotton*, L. R. 1 Ch. D. 232, but not interest on a legacy where the infant would only be entitled to the capital, and not to the interim interest on attaining twenty-one, *Re George*, 5 Ch. D. 837. See

also *Re Colgan*, 19 Ch. D. 305; *Re Bruce*, W. N. 1882, p. 129. This section does not seem to apply to cases where there is money raiseable out of land, but not actually raised and held by trustees, as in the case of portions under a settlement of real estate, see *Prec. XCII.*, p. 206. As to the meaning of "benefit," see *Re Brittlebank*, 30 W. R. 99.

(r) This section renders it unnecessary to insert in settlements the somewhat lengthy and cumbrous powers of distress and entry, or to limit a term to trustees by the settlement for the purpose of securing the rent-charge, powers which it is not often necessary to have recourse to.

sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent-charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

44 & 45
Vict. c. 41,
s. 44.

Remedies
for re-
covery of
annual
sums
charged on
land.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part

44 & 45
 Vict. c. 41,
 ss. 44, 45.

thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

Redemp-
 tion of
 quit-rents
 and other
 perpetual
 charges.

45.—(1.) Where there is a quit-rent, chief-rent, rent-charge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Commissioners.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent

is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent. 44 & 45
Vict. c. 31
ss. 45—47.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rent-charge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

XI.—POWERS OF ATTORNEY.

POWERS OF
ATTORNEY.

46.—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof (s). Execution
under
power of
attorney.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the Payment
by attorney
under
power
without
notice of

(s) The proper way for an attorney to execute a deed was in the name of his principal. By mistake, however, he not unfrequently executed it in his own name: hence questions

arose as to the validity of the execution. This section is intended to prevent these questions arising. See note (e), p. 52.

44 & 45
 Vict. c. 41,
 ss. 47, 48.
 death, &c.,
 good.

power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same (t).

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

Deposit of
 original
 instru-
 ments
 creating
 powers of
 attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

(t) This section is supplemented by the Conveyancing Act, 1882, ss. 8, 9.

44 & 45
· Vict. c. 41
ss. 49, 50.

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

49.—(1.) It hereby declared that the use of the word grant (*u*) is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

Use of word grant unnecessary.

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person (*x*); and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

Conveyance by a person to himself, &c.

(*u*) The word "grant" has never been necessary, but it has now for a long time been used as an appropriate and convenient expression for conveyances of both corporeal and incorporeal hereditaments; and the use of it was recognized by the Act 8 & 9 Vict. c. 106, s. 2, which enacts that all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. There is no reason why this word, approved by long usage and sanctioned by Parliament, should be discarded in favour of the expression "convey," which is found in the Schedules to this Act. Throughout the precedents contained in the first part of this book, the word "grant" has therefore been retained in conveyances of real estate and the word "assign" in conveyances of personal estate, except in those cases where the conveyance is made in exercise

of a statutory power, in which case it is proper to follow the language of the statute as closely as possible and to "convey."

(*x*) Before Lord St. Leonards' Act, 22 & 23 Vict. c. 35, see p. 231, personal property could not be assigned by one person to himself and another without the operation of two distinct deeds. There never was any difficulty or inconvenience in the conveyance of freeholds by one person to himself and another by one deed under the operation of the Statute of Uses, and there is no reason why the old form should not be retained, see *Prec. CIII.*, p. 233. Perhaps, however, in view of the looser and less formal style of conveyancing which this Act seems likely to introduce, both by its provisions and its examples, it may be wise to provide beforehand that such a conveyance as is indicated in the first part of this section shall do.

44 & 45
Vict. c. 41,
ss. 50—52. (2.) This section applies only to conveyances made after the commencement of this Act.

Words of
limitation
in fee or
in tail.

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs (*y*); and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

(2.) This section applies only to deeds executed after the commencement of this Act.

Powers
simply
collateral.

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power (*z*).

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

(*y*) In deeds before this Act the word "heirs" was absolutely necessary to create or pass an estate in fee simple. This was thoroughly known and understood, not only by all within, but by many without the legal profession, and being a thing clear and certain it was easy to remember, and care was taken to see that the word was duly inserted in deeds. Now, however, an alternative set of words, viz., "in fee simple," are proposed and authorized by this section. There is danger lest this should lead people to be less careful about the use of the word "heirs," and not equally careful about the use of the words "in fee simple." For be it observed that as the law now stands nothing will suffice for the creation of an estate in fee simple, except the word "heirs," or the words "in fee simple"; so that if by careless-

ness or by inadvertence the words "in fee" only are used, nothing beyond a life estate will pass to the grantee. For these reasons the word "heirs" has been retained throughout the conveyances given in Part I. as being the safer expression. With regard to wills it has already been provided by the Wills Act, 1 Vict. c. 26, s. 28, that "where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee, or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a contrary intention shall appear by the will."

(*z*) See *Edwards v. Slater*, Tudor's L. C. in Conv. 3rd Ed., p. 368, and *Re D'Angibau*, 15 Ch. D. 232. Also *Shirley v. Fisher*, W. N. 1882, p. 128.

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

<sup>44 & 45
Vict. c. 41,
ss. 53—56.</sup>

Construc-
tion of
supple-
mental or
annexed
deed.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

Receipt
in deed
sufficient.

(2.) This section applies only to deeds executed after the commencement of this Act.

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

Receipt in
deed or
indorsed,
evidence
for subse-
quent
purchaser.

(2.) This section applies only to deeds executed after the commencement of this Act.

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

Receipt in
deed or
indorsed,
authority
for pay-
ment to
solicitor.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

44 & 45
Vict. c. 41,
ss. 57—59.

Sufficiency
of Forms
in Fourth
Schedule.

Covenants
to bind
heirs, &c.

Covenants
to extend
to heirs,
&c.

57. Deeds in the form of and using the expressions in the Forms given in the Fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

58.—(1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed (a).

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed (a).

(3.) This section applies only to covenants made after the commencement of this Act.

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed (b).

(2.) This section extends to a covenant implied by virtue of this Act.

(a) In the cases provided for by these subsections respectively covenants need not be expressed to be made with the covenantee "his heirs and assigns," or "his executors, administrators and assigns" as the case may be. It does not seem, however, that the heirs, executors, administrators or assigns ought to be omitted from the body of the covenant where it is to be observed towards them also, for it may well be that the covenant is only intended to be or capable of being performed towards or for the benefit of the covenantee personally.

(b) The executors and administrators of the covenantor were bound before this Act. Under this Act the heirs also will be bound and it will be unnecessary for a man to covenant "for himself, his heirs, executors and administrators." As in the previous section, however, it does not seem that the heirs, &c., should be omitted from the body of the covenant where it is to be observed by them also, for it may well be that the covenantor himself only is intended to perform or capable of performing the covenant. The marginal notes to ss. 58, 59 are transposed.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

44 & 45
Vict. c. 41,
ss. 59—61.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves (c).

Effect of
covenant
with two
or more
jointly.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced

Effect of
advance on
joint ac-
count, &c.

(c) This will somewhat shorten covenants, &c., made with several persons, in which the expression "the said A. B. and C. or the survivors or survivor of them or the executors or administrators of such survivor, their or his assigns" had frequently to be repeated. It will in

future be sufficient to say "the said A. B. and C. or the persons claiming under them." Indeed "the said A. B. and C." alone might be sufficient, but with a view to subs. 3 it seems advisable to extend the benefit of the covenant to the persons claiming under them.

44 & 45
 Vict. c. 41,
 ss. 61, 62.

or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account (*d*).

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

Grants of
 easements,
 &c., by way
 of use.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly (*e*).

(2.) This section applies only to conveyances made after the commencement of this Act.

(*d*) This renders it unnecessary to insert a declaration to this effect in the deed, see *Precedents XLI.*, *CIII.*, pp. 76, 232.

were commonly conveyed by way of use, though there was some slight doubt as to the correctness of this mode of conveyance.

(*e*) Before this Act easements

63.—(1.) Every conveyance shall, by virtue of this Act, ^{44 & 45} be effectual to pass all the estate, right, title, interest, ^{Vict. c. 41} claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed ^{ss. 63—65.} or intended so to be, or which they respectively have power to convey in, to, or on the same (*f*). ^{Provision for all the estate, &c.}

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this Act.

64. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require. ^{Construction of implied covenants.}

XIII.—LONG TERMS (*g*).

LONG TERMS.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ^{Enlargement of residue of long term into fee simple.}

(*f*) The estate clause has been omitted from the Precedents in Part I. by s. 11 of the Conveyancing Act, 1882, p. 325. See Prec. LXXIV., p. 136.

(*g*) This section has been amended

44 & 45
 Vict. c. 41,
 s. 65.

ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement,

the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

44 & 45
Vict. c. 41,
ss. 65, 66.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

XIV.—ADOPTION OF ACT.

ADOPTION OF ACT.

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in

Protection
of solicitor
and
trustees
adopting
Act.

44 & 45
 Vict. c. 41,
 ss. 66, 67.

place thereof, in any case where the provisions of this Act would allow of his doing so.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

MISCELLA-
 NEOUS.

XV.—MISCELLANEOUS.

Regula-
 tions
 respecting
 notice.

67.—(1.) Any notice required or authorized by this Act to be served shall be in writing.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mort-

gatee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

68. The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document or in any Act of Parliament (*h*).

44 & 45
Vict. c. 41,
ss. 67-69.

Short title
of 5 & 6
Will. 4,
c. 62.

XVI.—COURT; PROCEDURE; ORDERS.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

COURT;
PROCEDURE;
ORDERS.
Regulations
respecting
payments
into Court
and applications.

(*h*) See p. 11.

44 & 45
 Vict. c. 41,
 ss. 69, 70. (8.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made
 39 & 40
 Vict. c. 59, accordingly.

s. 17.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) General Rules, and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

Orders of
 Court con-
 clusive.

70.—(1.) An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

40 & 41
 Vict. c. 18,
 s. 40.

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid (i).

(i) See *Re Hall Dare's Contract*, L. R. 21 Ch. D. 41.

44 & 45
Vict. c. 41,
ss. 71, 72.

XVII.—REPEALS.

REPEALS.

71.—(1.) The enactments described in Part III. of the Second Schedule to this Act are hereby repealed.

Repeal of enactments in Part III. of Second Schedule; restriction on all repeals.

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action; proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, or any former Act repealed by that Act.

XVIII.—IRELAND.

IRELAND.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

Modifications respecting Ireland.

(2.) The Court shall be her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division.

(4.) The proper office of the Supreme Court of Judicature in Ireland shall be substituted for the central office of the Supreme Court of Judicature.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

40 & 41
Vict. c. 57,
s. 69.

44 & 45
Vict. c. 41,
s. 73.

Death of
bare
trustee
intestate,
&c., 37 & 38
Vict. c. 78.

73.—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death thereafter happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation (*k*).

(2.) This section extends to Ireland only.

(*k*) See p. 7.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS AFFECTED.

PART I. (1).

- 1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.
- 2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, Crown debts, *lis pendens*, and fiats in bankruptcy.
- 18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, Crown debts, cases of *lis pendens*, and life annuities or rent-charges.
- 22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.
- 23 & 24 Vict. c. 38.—An Act to further amend the law of property.
- 23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.
- 27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.
- 28 & 29 Vict. c. 104.—The Crown Suits, &c., Act, 1865.
- 31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

PART II.

- 5 & 6 Will. 4, c. 62.—An Act to repeal an Act of the present session of Parliament, intituled "An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;" and to make other provisions for the abolition of unnecessary oaths.

(1) These Acts were referred to in the section, relating to searches struck out of the bill. This section

is now included in the Conveyancing Act, 1882, see s. 2, p. 317.

44 & 45
 Vict. c. 41,
 sched. 2.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

PART I.

sect. 14, subs. 7.	22 & 23 Vict. c. 35. in part.	An Act to further amend the law of property and to relieve trustees - Sections four to nine.	} in part; namely,—
	23 & 24 Vict. c. 126. in part.	The Common Law Pro- cedure Act, 1860- Section two.	

PART II.

sect. 25, subs. 6.	15 & 16 Vict. c. 86. in part.	An Act to amend the practice and course of proceeding in the High Court of Chancery - Section forty-eight.	} in part; namely,—

PART III.

sect. 71.	8 & 9 Vict. c. 119.	An Act to facilitate the conveyance of real pro- perty.	} in part; namely,—
	23 & 24 Vict. c. 145. in part.	An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills- - - -	
		Parts II. and III. (sections eleven to thirty).	

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1882 between A. of [etc.] of the one part and M. of [etc.] of the other part WITNESSETH that in consideration of the sum of £ now paid to A. by M. of which sum A. hereby acknowledges the receipt A. as mortgagor and as beneficial owner hereby conveys to M. All that [etc.] To hold to and to the use of M. in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness, &c.

* * * *Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.*

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between M. of [etc.] of the one part and T. of [etc.] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [etc.] WITNESSETH that in consideration of the sum of £ now paid to M. by T. being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum M. hereby acknowledges the receipt M. as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage.

In witness, &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between A. of [etc.] of the 1st part B. of [etc.] of the 2nd part and C. of [etc.] of the 3rd part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [etc.] WITNESSETH that in consideration of the sum of £ now paid to A. by C. being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum A. hereby acknowledges the receipt A. as mortgagee with the

44 & 45 concurrence of B. who joins herein as covenantor hereby conveys and
 Vict. c. 41, transfers to C. the benefit of the said mortgage.
 sched. 8. In witness, &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883 between A. of [dec.] of the 1st part B. of [dec.] of the 2nd part and C. of [dec.] of the 3rd part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [dec.] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS B. is seised in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to A. by C. of which sum A. hereby acknowledges the receipt and B. hereby acknowledges the payment and receipt as aforesaid* A. as mortgagee hereby conveys and transfers to C. the benefit of the said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as mortgagee and according to his estate and by direction of B. hereby conveys and B. as beneficial owner hereby conveys and confirms to C. All that [dec.] To hold to and to the use of C. in fee simple for securing payment on the day of 1882 off the sum of £ as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness, &c.

[Or, in case of further advance, after aforesaid at * insert and also in consideration of the further sum of £ now paid by C. to B. of which sum B. hereby acknowledges the receipt, and after of at † insert the sum of £ and £ making together]

. Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

PART III.

Deed of Statutory Re-conveyance of Mortgage.

THIS INDENTURE made by way of statutory re-conveyance of mortgage the day of 1884 between C. of [dec.] of the one part and B. of [dec.] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883 and made between [dec.] WITNESSETH that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest C. hereby acknowledges the receipt C. as mortgagee hereby conveys to B. all the lands and hereditaments now vested in C. under the said indenture To hold to and to the use of B. in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, &c.

. Variations as noted above.

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

I.—*Mortgage.*

THIS INDENTURE OF MORTGAGE made the day of
1882 between A. of [dec.] of the one part and B. of [dec.] and C. of [dec.]
of the other part WITNESSETH that in consideration of the sum of
£ paid to A. by B. and C. out of money belonging to
them on a joint account of which sum A. hereby acknowledges the
receipt A. hereby covenants with B. and C. to pay to them on the
day of 1882 the sum of £ with
interest thereon in the meantime at the rate of [four] per centum per
annum and also as long after that day as any principal money remains
due under this mortgage to pay to B. and C. interest thereon at the
same rate by equal half-yearly payments on the day of
and the day of

AND THIS INDENTURE ALSO WITNESSETH that for the same con-
sideration A. as beneficial owner hereby conveys to B. and C. All
that [dec.] To hold to and to the use of B. and C. in fee simple
subject to the proviso for redemption following (namely) that if A.
or any person claiming under him shall on the day of
1882 pay to B. and C. the sum of £ and
interest thereon at the rate aforesaid then B. and C. or the persons
claiming under them will at the request and cost of A. or the persons
claiming under him re-convey the premises to A. or the persons
claiming under him AND A. hereby covenants with B. as follows
[here add covenant as to fire insurance or other special covenants
required.]

In witness, &c.

II.—*Further Charge.*

THIS INDENTURE made the day of 18
between [the same parties as the foregoing mortgage] and supplemental
to an indenture of mortgage dated the day of
18 and made between the same parties for securing the sum of
£ and interest at [four] per centum per annum on
property at [dec.] WITNESSETH that in consideration of the further
sum of £ paid to A. by B. and C. out of money belonging
to them on a joint account [add receipt and covenant as in the foregoing
mortgage] and further that all the property comprised in the before-
mentioned indenture of mortgage shall stand charged with the pay-
ment to B. and C. of the sum of £ and the interest
thereon hereinbefore covenanted to be paid as well as the sum of
£ and interest secured by the same indenture.

In witness, &c.

44 & 45
 Vict. c. 41,
 sched. 4.

III.—Conveyance on Sale.

THIS INDENTURE made the _____ day of _____ 1883
 between A. of [&c.] of the 1st part B. of [&c.] and C. of [&c.] of the
 2nd part and M. of [&c.] of the 3rd part WHEREAS by an indenture
 dated [&c.] and made between [&c.] the lands hereinafter mentioned
 were conveyed by A. to B. and C. in fee simple by way of mortgage
 for securing £ _____ and interest and by a supplemental
 indenture dated [&c.] and made between the same parties those lands
 were charged by A. with the payment to B. and C. of the further
 sum of £ _____ and interest thereon AND WHEREAS a principal
 sum of £ _____ remains due under the two before-mentioned
 indentures but all interest thereon has been paid as B. and C. hereby
 acknowledge NOW THIS INDENTURE WITNESSETH that in considera-
 tion of the sum of £ _____ paid by the direction of A. to B.
 and C. and of the sum of £ _____ paid to A. those two sums
 making together the total sum of £ _____ paid by M. for the
 purchase of the fee simple of the lands hereinafter mentioned of
 which sum of £ _____ B. and C. hereby acknowledge the
 receipt and of which total sum of £ _____ A. hereby acknow-
 ledges the payment and receipt in manner before-mentioned B. and
 C. as mortgagees and by the direction of A. as beneficial owner hereby
 convey and A. as beneficial owner hereby conveys and confirms to
 M. All that [&c.] To hold to and to the use of M. in fee simple
 discharged from all money secured by and from all claims under the
 before-mentioned indentures [Add, if required], And A. hereby
 acknowledges the right of M. to production of the documents of title
 mentioned in the Schedule hereto and to delivery of copies thereof
 and hereby undertakes for the safe custody thereof].

In witness, &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

IV.—Marriage Settlement.

THIS INDENTURE made the _____ day of _____ 1882
 between John M. of [&c.] of the 1st part Jane S. of [&c.] of the
 2nd part and X. of [&c.] and Y. of [&c.] of the 3rd part WITNESSETH
 that in consideration of the intended marriage between John M. and
 Jane S. John M. as settlor hereby conveys to X. and Y. All that [&c.]
 To hold to X. and Y. in fee simple to the use of John M. in fee
 simple until the marriage and after the marriage to the use of John
 M. during his life without impeachment of waste with remainder
 after his death to the use that Jane S. if she survives him may
 receive during the rest of her life a yearly jointure rentcharge of
 £ _____ to commence from his death and to be paid by equal
 half-yearly payments the first thereof to be made at the end of six
 calendar months from his death if she is then living or if not a pro-
 portional part to be paid at her death and subject to the before-
 mentioned rentcharge to the use of X. and Y. for a term of five
 hundred years without impeachment of waste on the trusts herein-
 after declared and subject thereto to the use of the first and other
 sons of John M. and Jane S. successively according to seniority in
 tail male with remainder [insert here, if thought desirable, to the use of

the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple [*Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired*].

44 & 45
Vict. c. 41,
sched. 4.

In witness, &c.

CONVEYANCING ACT, 1882.

45 & 46 VICT. c. 39.

An Act for further improving the Practice of Conveyancing ; and for other purposes.

[10th August, 1882.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Preliminary.
Short
titles;
commence-
ment;
extent;
interpre-
tation.

Preliminary.

44 & 45
Vict. c. 41.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882 ; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not ;

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or

other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser; 45 & 46
Vict. c. 39,
ss. 1, 2.

- (iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland" is referred to as the Fines and Recoveries (Ireland) Act. 3 & 4 Will.
4, c. 74.

4 & 5 Will.
4, c. 92.

Searches (a).

Searches.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section. Official
negative
and other
certificates
of searches
for judgments,
crown
debts, &c.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser (b), as against persons

(a) The provisions relating to search were struck out from the bill of 1881 before it became the Conveyancing and Law of Property Act, 1881. The schedule referred to in this section was left in by inadvertence.

consideration, see the definition in s. 1, subs. 4, ii., in whose favour the certificate is declared to be conclusive. The loss arising from any mistake in the certificate must therefore, it is presumed, be borne by the person interested under the judgment.

(b) Purchaser i.e. for valuable con-

45 & 46
 Vict. c. 39,
 s. 2.

interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

39 & 40
 Vict. c. 59.

44 & 45
 Vict. c. 68.

(5.) General Rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any Rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be

answerable in respect of any loss that may arise from error in the certificate. 45 & 46
Vict. c. 39
ss. 2, 3.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds inrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule. 3 & 4 Will.
4, c. 74.

(12.) This section does not extend to Ireland.

Notice (c).

Notice.

3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless— Restriction on
construc-
tive notice.

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(c) This section does not seem to make much alteration in the law respecting notice, but rather to be declaratory of the existing law.

45 & 46
Vict. c. 39,
ss. 3—6.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Leases.

Leases.

Contract
for lease
not part of
title to
lease.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

*Separate
trustees.*

Separate Trustees.

Appoint-
ment of
separate
sets of
trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part (*d*).

(2.) This section applies to trusts created either before or after the commencement of this Act.

Powers.

Powers.

Disclaimer
of power
by trust-
tees.

6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by

the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

45 & 46
Vict. c. 39,
ss. 6, 7.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women (c).

*Married
women.*

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words “two of the perpetual commissioners, or two special commissioners,” the words “one of the perpetual commissioners, or one special commissioner;” and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word “persons” the word “person,” and for the word “commissioners” the words “a commissioner;” and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

Acknowledgment
of deeds
by married
women.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special com-

(c) This section is likely to have a somewhat limited application, if the true construction of the Married Women's Property Act, 1882, which gives a married woman power of holding and disposing of real and personal property as her separate property in the same manner as if she were a feme sole, be to dispense with the acknowledgment on any disposition of separate property; see sections 1, 2, 5 of that Act, p. 148.

45 & 46
 Vict. c. 39,
 s. 7.

missioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as a solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

39 & 40
 Vict. c. 59.
 44 & 45
 Vict. c. 68.

40 & 41
 Vict. c. 57.

(4.) The enactments described in the Schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively

relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed. 45 & 46
Vict. c. 39,
ss. 7, 8.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

Powers of Attorney (f).

*Powers of
attorney.*

8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,— Effect of
power of
attorney,
for value,
made abso-
lutely irre-
vocable.

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(f) See Conveyancing Act, 1881, s. 47, p. 293, and Prec. XXXIX., p. 70.

45 & 46
Vict. c. 39,
ss. 8—10.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of
power of
attorney,
for value
or not,
made ir-
revocable for
fixed time.

9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

- (i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and
- (ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and
- (iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

*Executory
limitations.*

Executory Limitations.

Restric-
tion on

10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or deter-

minable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

45 & 46
Vict. c. 39,
ss. 10—12.
executory
limitations.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Long Terms.

Long terms.

11. Section sixty-five (g) of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

Amend-
ment of
enactment
respecting
long terms.

- (i.) Any term liable to be determined by re-entry for condition broken; or
- (ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

Mortgages.

Mortgages.

12. The right of the mortgagor, under section fifteen (h) of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Reconvey-
ance on
mortgage.

45 & 46
Vict. c. 39,
s. 13.

*Saving.**Saving.*

Restric-
tion on
repeals in
this Act.

13. The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of any thing done or suffered, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

44 & 45
Vict. c. 39,
schedule.

SCHEDULE.

REPEALS.

- | | |
|--|---|
| <p>3 & 4 Will. 4, c. 74.
in part.</p> | <p>The Fines and Recover- }
ies Act - - - } in part; namely,— Section 7
Section eighty-four, from and including (4).
the words “and the same judge,” to
the end of that section.
Sections eighty-five to eighty-eight, in-
clusive.</p> |
| <p>4 & 5 Will. 4, c. 92.
in part.</p> | <p>The Fines and Recover- }
ies (Ireland) Act - - } in part; namely,—
Section seventy-five, from and including
the words “and the same judge,” to
the end of that section.
Sections seventy-six to seventy-nine,
inclusive.</p> |
| <p>17 & 18 Vict. c. 75.—An Act to remove doubts concerning the due
acknowledgments of deeds by married women in certain cases.</p> | |
| <p>41 & 42 Vict. c. 23.—The Acknowledgment of Deeds by Married
Women (Ireland) Act, 1878.</p> | |

SETTLED LAND ACT, 1882.

45 & 46 VICT. c. 38.

An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon. [10th August, 1882.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PRELIMINARY.

I.—PRELIMINARY.

- Short title. 1.—(1.) This Act may be cited as the Settled Land Act, 1882.
- Commencement. (2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.
- Extent. (3.) This Act does not extend to Scotland.

DEFINITIONS.

II.—DEFINITIONS.

- Definition of settlement, tenant for life, &c. 2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instru-

ments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

45 & 46
Vict. c. 38
s. 2.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time

^{45 & 46}
^{Vict. c. 38,} being, who are by the settlement declared to be trustees
^{s. 2.} thereof for purposes of this Act, are for purposes of this
 Act trustees of the settlement (a).

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(iii.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith:

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by

(a) In settlements made before the commencement of this Act, the trustees will generally be found to have a power of sale. In settlements made after the commencement of the Act when a power of sale will probably not be given to them, it will be important to declare that the trustees then appointed and all future trustees shall be trustees of the settlement for the purposes of this Act, see p. 198. If this is omitted,

although there may be trustees, they will not be trustees capable of receiving and giving a discharge for any capital money under this Act, or capable of acting in any way under its provisions: cf. note (p), p. 287. It may become necessary to apply to the court under s. 38, for the appointment of trustees of the settlement for the purposes of the Act, if such a declaration is omitted.

surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes:

45 & 46
Vict. c. 38,
ss. 2, 3.

- (v.) Manor includes lordship, and reputed manor or lordship:
- (vi.) Steward includes deputy steward, or other proper officer, of a manor:
- (vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will:
- (viii.) Securities include stocks, funds, and shares:
- (ix.) Her Majesty's High Court of Justice is referred to as the Court:
- (x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners:
- (xi.) Person includes corporation.

III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION (b).

General Powers and Regulations.

3. A tenant for life—

- (i.) May sell the settled land, or any part thereof, or any

SALE;
ENFRAN-
CHISE-
MENT; EX-
CHANGE;
PARTI-
TION.

*General
powers and
regula-
tions.*

(b) The manner in which the tenant for life is to exercise these powers is worked out by the following sections. To take the case of a sale, under s. 45 he must give one month's notice of his intention to each of the trustees of the settlement and to their solicitor if known:

45 & 46
Vict. c. 38,
s. 3.

Powers to
tenant for
life to sell,
&c.

- easement, right, or privilege of any kind, over or in relation to the same; and
- (ii.) Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and
- (iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and
- (iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

under s. 31 he can enter into the contract for sale, which, under s. 4, may be for a sale in one lot or in several lots and by auction or private contract and subject to any stipulations respecting title &c., but under the same section it must be for the best price that can reasonably be obtained: under s. 17 he can sell the surface or minerals apart; but under s. 15 he cannot sell the mansion house park &c., except with the consent of the trustees or under an order of the Court. The sale can be completed by a conveyance under s. 20, which will be effectual to pass the land conveyed, whether freehold copyhold or leasehold, discharged from all the limitations powers and provisions of the settlement, but subject to and with the

exception of all interests prior to the settlement, all charges for securing money actually raised, and all leases &c. Such incumbrances can only be discharged with the consent of the incumbrancers; but in order that they may be induced to join in the conveyance for the purpose of exonerating the land sold, the tenant for life is given power under s. 5 with the consent of the incumbrancer to transfer the incumbrance to any other part of the settled land in exoneration of the part sold. Under s. 22 the purchase money must be paid either to the trustees or into Court, and it may then under s. 21 be invested in the purchase of land or in any other mode of investment authorized by that section.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained (c). 45 & 46
Vict. c. 38.
ss. 4, 5.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained. Regula-
tions re-
specting
sale, en-
franchise-
ment,
exchange,
and
partition.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be (d).

(8.) Settled land in England shall not be given in exchange for land out of England.

Special Powers.

*Special
powers.*

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on Transfer
of incum-
brances on

(c) Protection against any question as to the price being the best is given to the purchaser by s. 54, p. 367.

(d) On an enfranchisement of copyholds it is usual to re-grant the rights of common, &c., enjoyed by

the copyholder in respect of his copyhold, see Prec. XXXV., p. 66. Otherwise these rights may become extinguished; see Scriv. Cop. 6th ed. 283.

45 & 46
 Vict. c. 38,
 s. 5.

land sold,
 &c.

partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly (e).

(e) See Prec. LIV. Where money has been actually raised upon mortgage of part of the settled estate, the mortgagee will very probably decline to have his security transferred to another part of the estate. If his security is very ample and the part sold is comparatively insignificant, he may not object to release that part, being satisfied with the rest of his security, and without any further charge under this section. But the mortgagee cannot be expected to allow one security to be substituted for another without being satisfied of the value of the proposed substitute or without a careful investigation of the title to it. The expense of all this will have to come out of the capital moneys under s. 21 (x). If the incumbrancer is a member of the family entitled to a rent-charge or a portion he would very likely, if competent, make no objection to releasing the part sold and having his incumbrance transferred to another part of the settled estate. But inasmuch as his charge already probably extends over the whole or the greater portion of the estates and is amply secured, it does not seem that there will be much necessity for extending it over any portion of the estate subsequently acquired or not included in his security, unless indeed the sale and purchase of lands goes on to a very large extent, or settled lands of con-

siderable value are exchanged. Trustees would scarcely feel justified in consenting to their security being transferred from one portion of the settled land to another without ascertaining that the title and value were equally good, still less might they feel justified in releasing any portion of their security without any equivalent, see Dart's V. and P. 5th ed. p. 612. It is not quite clear whether the tenant for life without the consent of the incumbrancer could on a sale &c. of part of the settled land charge the incumbrance on any other part of the settled land in exoneration of the part sold, as against everyone except the incumbrancer. It does not however seem clear that he cannot, and if the consent of the incumbrancer cannot be obtained a willing purchaser might prefer to take the land with such a charge rather than forego his purchase; see note (q), p. 42. These difficulties may to a considerable extent limit the utility of this section. Section 5 of the Conveyancing Act, 1881, giving the Court power to declare the land to be freed from the incumbrance only applies where sufficient money is paid into Court to discharge the whole of the incumbrance, and will not therefore be of any service where a part only of the land subject to the incumbrance is sold not producing enough to pay off the whole of the incumbrance, see note to that sect., p. 247.

45 & 46
Vict. c. 38,
ss. 6, 7.

IV.—LEASES.

LEASES.

General Powers and Regulations.

General powers and regulations.

6. A tenant for life may lease the settled land (*f*), or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

Power for tenant for life to lease for ordinary or building or mining purposes.

(i.) In case of a building lease, ninety-nine years :

(ii.) In case of a mining lease, sixty years :

(iii.) In case of any other lease, twenty-one years.

7.—(1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

Regulations respecting leases generally.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life ; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

(*f*) See Prec. LXXI, p. 131.

45 & 46
 Vict. c. 38,
 ss. 8, 9.

Building and Mining Leases.

*Building
 and mining
 leases.*

*Regula-
 tions re-
 specting
 building
 leases.*

8.—(1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair (*g*), buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorised by this Act, for or in connection with building purposes.

(2.) A peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than ten shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

*Regula-
 tions re-
 specting
 mining
 leases.*

9.—(1.) In a mining lease—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(*g*) See *Truscott v. Diamond Rock Boring Company*, L. R. 20 Ch. D. 251.

- (ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

^{45 & 46}
Vict. c. 38,
ss. 9, 10.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connection with mining purposes.

10.—(1.) Where it is shown to the Court with respect to the district in which any settled land is situate, either—

Variation
of building
or mining
lease
according
to circum-
stances of
district.

- (i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or

- (ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorize generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affect-

^{45 & 46}
 Vict. c. 38, ing the settled land, or part thereof, in conformity with
 ss. 10—13. the order.

Part of
 mining
 rent to be
 set aside.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

*Special
 powers.*

Special Powers.

Leasing
 powers for
 special
 objects.

12. The leasing power of a tenant for life extends to the making of—

- (i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title; and
- (ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
- (iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

*Surren-
 ders.*

Surrenders.

Surrender
 and new
 grant of
 leases.

13.—(1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an

exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them. 45 & 46
Vict. c. 38,
ss. 13, 14.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

Copyholds.

Copyholds.

14.—(1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land. Power to
grant to
copy-
holders
licences for
leasing.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence,

45 & 46
 Vict. c. 38,
 ss. 15, 16.

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

SALES,
 LEASES,
 AND OTHER
 DISPOSI-
 TIONS.

*Mansion
 and park.*
 Restric-
 tion as to
 mansion
 house,
 park, &c.

Mansion and Park.

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court.

*Streets and
 open spaces.*

Dedication
 for streets,
 open
 spaces,
 &c.

Streets and open Spaces.

16. On or in connection with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof,—

- (i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, water-courses, fencing, paving, or other works necessary or proper in connection therewith; and
- (ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
- (iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be inrolled in the Central Office of the Supreme Court of Judica-

ture), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

45 & 46
Vict. c. 38,
ss. 16—18.

Surface and Minerals apart.

*Surface
and
minerals
apart.*

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land (i).

*Separate
dealing
with sur-
face and
minerals,
with or
without
way-
leaves, &c.*

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Mortgage.

Mortgage.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land or otherwise, and the money raised shall be capital money arising under this Act (k).

*Mortgage
for
equality
money, &c.*

(i) See Prec. XXXI., p. 59.

(k) See Prec. LII., p. 96. This Act gives no power to the tenant for life to raise money by mortgage of the settled estates except for enfranchisement or for equality of exchange or partition. The money raised will be capital money arising under the Act, and consequently

must be paid either to the trustees or into court. The receipt of the trustees under s. 40 will discharge the mortgagee from the money and also from being concerned to see that the money is wanted for any purpose of the Act: under s. 46, subs. 2, payment of money into court will exonerate him therefrom.

45 & 46
Vict. c. 38,
ss. 19, 20.

*Undivided
share.*

Concur-
rence in
exercise of
powers as
to un-
divided
share.

*Convey-
ances.*

Comple-
tion of
sale, lease,
&c., by
convey-
ance.

Undivided Share.

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

Conveyance.

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees (*l*), or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge (*m*).

(*l*) It is usual in a strict settlement of freeholds copyholds and leaseholds to convey the freeholds to legal uses, to covenant to surrender and to surrender the copyholds to the use of the trustees and to assign the leaseholds to them upon trusts corresponding to the uses declared of the freeholds, see *Préc. XC.*, p. 189. But the surrender of the copyholds to the trustees is not always followed by their admittance. If the fines are heavy perhaps only one trustee is admitted or none are admitted until the necessity for their admittance arises, and so too on the appointment of new trustees. Until however the trustees have been admitted the copyhold land cannot properly be said to be vested in them. The question therefore arises whether in

this section the maxim “*expressio unius est exclusio alterius*” applies so as to limit the power of the tenant for life over copyholds to those copyholds only to which the trustees have been admitted. The word land by itself would include any estate or interest therein which is the subject of the settlement, see s. 2, subs. 3, and it seems more reasonable to suppose that the words “including copyhold land &c. vested in trustees” are intended to make it clear that the tenant for life can sell such lands even though the legal estate is vested in the trustees, than to suppose that they were intended to exclude other lands from the operation of the section.

(*m*) This section is supplemented by s. 55, subs. 2, p. 368, which gives

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act (*n*), is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder (*o*), but subject to and with the exception of—

45 & 46
Vict. c. 38,
s. 20.

- (i.) All estates, interests, and charges having priority to the settlement (*p*); and
- (ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed (*p*); and

the tenant for life and the trustees power to execute make and do all deeds instruments and things necessary or proper for effectuating the sale &c. The tenant for life undoubtedly has power under this Act to sell the settled land, except the mansion &c., without any consent or concurrence on the part of the trustees of the settlement, but inasmuch as in most cases the purchase money will be paid to them in order to avoid the expense of payment into court, it will be well to make them parties to obtain their receipt on the deed: and by s. 39, subs. 1, there must be at least two trustees to receive the money, unless the settlement authorizes the receipt by one trustee. Moreover inasmuch as in most settlements already made a power of sale is given to the trustees with the consent of the tenant for life, it will be desirable for them to join in the conveyance to the purchaser for the purpose of giving an express covenant against incumbrances, especially if they have been trustees during a minority with power of selling &c. at their own discretion;

see Prec. XXI., p. 35.

(*n*) It seems unnecessary to insert in the habendum of a conveyance by a tenant for life any declaration that the land conveyed is to be held discharged from the limitations &c. of the settlement. In fact if the recital of the contract shows an agreement for sale in fee simple in possession free from incumbrances, or as the case may be, and the land is then conveyed to the use of the purchaser his heirs and assigns, the intention will be sufficiently expressed and the deed will then under this section operate to the full extent without any declaration to that effect.

(*o*) That is to say, such charges as the rent-charge given to the wife of the tenant for life by way of jointure and the portions to be raised for his younger children, and the terms vested in trustees for securing such portions under his marriage settlement.

(*p*) That is to say, (1.) such charges as the rent-charge for the mother of the tenant for life by way of jointure and the portions for his younger brothers and sisters given by the

45 & 46
 Vict. c. 38,
 s. 20.

(iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by

settlement made on the marriage of his father and mother, and (ii.) such charges as mortgages which have been actually made by the tenant for life under s. 18, and any mortgage made by the trustees of the term for raising portions for his younger children to a person who advances money to provide for the portion of any younger child, but not apparently a mortgage made direct to a younger child to secure his portion and put him in the position of a mortgagee, unless he had transferred that mortgage to a third person who actually advanced the money. It seems likely that the greatest obstacles to the free exercise by the tenant for life of the powers conferred by this Act will arise where a settled estate is incumbered with such charges as come within s. 2 (i.) and (ii.), which the tenant for life has no power to affect without the consent of the incumbrancer. This consent it may be difficult if not impossible to obtain. If the incumbrance is a mortgage vested in a mortgagee, a jointure belonging to a widow, or portions belonging to younger brothers and sisters, and such persons are sui juris and competent, they may be willing to join in the conveyance to the purchaser, whether upon having their incumbrance transferred to other land under s. 5 or not. But if an incumbrance is vested in trustees, whether they be the executors of the mortgagee or the trustees of the term of 1000 years for raising the portions,

or the trustees of a settlement made upon the marriage of any younger brother or sister and settling the portion, great difficulty may be experienced in obtaining a satisfactory discharge. For even if their incumbrance extends over the whole of the settled land and is amply secured, it is by no means certain that they would be justified in releasing or competent to release any portion of their security except on receiving the purchase money, see *Dart's V. and P.* 5th ed. 612; and if a substituted security is offered under s. 5 they may have to run the risk of its value not being equally great and the title to it not equally secure with that of the land which they release. In the case of a mortgage to secure money actually raised, it is not improbable that the tenant for life will desire to sell a portion of the settled land to discharge that mortgage; but in the case of portions, they frequently remain a charge upon the land without being actually raised, and the tenant for life may desire that the money raised by a sale of part of the settled estate may be applied in improvements under s. 25. In such cases the expedient adopted in *Proc. III.*, cl. 6, and in note (g), p. 42, may satisfy a willing purchaser; but it will be convenient and for the benefit of the settled estate if by the settlement by which a term is limited to trustees for the purpose of raising portions a power is also given to them to release any part of the

the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

45 & 46
Vict. c. 38,
ss. 20, 21.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly (*g*); but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the Court rolls.

VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised (*r*), shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.
Capital money under Act; investment, &c., by trustees or Court.

settled land without the consent of the portioner without consideration and without incurring liability, as in Prec. XC., p. 195, and Prec. XCI., p. 203. See also note to s. 5, p. 334.

(*g*) Under this section the tenant for life will convey copyholds by deed, and not covenant to surrender, which as he might not be the person admitted under the settlement would be inappropriate. A purchaser under the deed will require to have his title perfected by admittance; a mortgagee will probably not

be admitted unless occasion requires, see note (*g*), p. 88, and note (*n*) to Conveyancing Act, 1881, s. 7, subs. 5, p. 258.

(*r*) That is to say, presumably in or towards discharge of any incumbrance on the land sold, or if money has been raised by mortgage for enfranchisement or for equality of exchange or partition under s. 5, it must be applied for that object, see notes (*x*), (*z*), & ss. 22, 24, pp. 348, 349.

45 & 46
Vict. c. 38,
s. 21.

- (i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities :
- (ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rent-charge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land :
- (iii.) In payment for any improvement authorized by this Act :
- (iv.) In payment for equality of exchange or partition of settled land :
- (v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land :
- (vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life :
- (vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :

- (viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
- (ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge :
- (x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act :
- (xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder (s).

45 & 46
Vict. c. 38,
ss. 21, 22.

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into court (t), at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the court, as the case may be, accordingly.

Regulations respecting investment, devolution, and income of securities, &c.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life (u), and in default thereof, according to the discretion

(s) The range of investment and application of capital moneys given by this section is so wide and liberal that it will probably not often be necessary to insert any other power to invest in future settlements, see *Prec. XC.*, p. 198.

in possession, And in the matter of the Settled Land Act, 1882." If necessary general rules for purposes of this Act will be made under s. 46, subs. 9, see p. 363.

(t) Money paid into court will probably be paid to the credit of an account to be entitled "In the matter of the Settled Land Act, 1882, And in the matter of an Indenture of Settlement dated &c. (or the will of J. S., dated &c.) under which A. is tenant for life

(u) The whole scheme of this Act is to give the tenant for life, in spite of any provision to the contrary in the settlement (ss. 50, 51, 56), an absolute and almost uncontrolled power of dealing with the settled land, of exchanging it for other land or converting it into money, with provisions to secure that whatever it is converted into shall remain sub-

45 & 46
 Vict. c. 38,
 s. 22.

of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement (x).

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

ject to the uses and trusts of the settlement. By s. 56, subs. 2, it is provided that even where a settlement expressly authorizes the trustees alone and without the consent of the tenant for life to exercise any power by this Act conferred on the tenant for life, his consent shall nevertheless be necessary; and consistently with that section, s. 22 provides for the application of the capital money in any of the authorized modes at the option of the tenant for life. See however note (a) to s. 25, p. 350.

(x) This section does not seem to provide for capital moneys, which represent land sold &c. under the Act and are to be considered as land, being held subject to any charges, from which the tenant for life cannot sell the land discharged under s. 20, but which the mortgagee or portioner has released from his security. However under s. 21 the discretion for the investment of capital money is expressly made "subject to payment of claims properly payable thereout."

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

45 & 46
Vict. c. 38,
ss. 22—24.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

Invest-
ment in
land in
England.

24.—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section (y).

Settle-
ment of
land pur-
chased,
taken in
exchange,
&c.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition (z).

(y) See *Precedents* XXIX., XXX., XXXI., pp. 53, 55, 57.

(z) This section provides that when the capital money is re-invested

45 & 46
Vict. c. 38,
ss. 24, 25.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

IMPROVE- MENTS.

Improvements with capital trust money.
Description of improve-

VII.—IMPROVEMENTS (a).

Improvements with Capital Trust Money.

25. Improvements authorized by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any

in land, that land may be made subject to any charge in respect of money actually raised and remaining unpaid from which the settled land has been released by the incumbrancer in order to the completion of a sale &c.; but this does not seem to include the case of a portioner under a prior settlement who has released any land sold from his portion, which probably remains a charge upon the rest of the settled land but is not actually raised. See however note (x), p. 348.

(a) The improvements authorized by the Act to be made out of capital moneys are necessarily more or less wasting investments. Consequently the Act does not give to

the tenant for life an uncontrolled option with regard to such application of the capital money, but in the interests of the remaindermen safeguards such application by the provisions of s. 26, which require the sanction of the trustees or of the Court to any such improvement. That sanction ought, of course, to be withheld from any improvement not of a sufficiently lasting character. By ss. 28, 29, the improvements are to be maintained. Under the Improvement of Land Act, 1864, 27 & 28 Vict. c. 114, the tenant for life has power to charge the settled land with money raised for improvements as therein authorized.

operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

45 & 46
Vict. c. 38,
s. 25.

ments
authorized
by Act.

- (i.) Drainage, including the straightening, widening, or deepening of drains, streams, and water-courses :
- (ii.) Irrigation ; warping :
- (iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure :
- (iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water :
- (v.) Groynes ; sea walls ; defences against water :
- (vi.) Inclosing ; straightening of fences ; re-division of fields :
- (vii.) Reclamation ; dry warping :
- (viii.) Farm roads ; private roads ; roads or streets in villages or towns :
- (ix.) Clearing ; trenching ; planting :
- (x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not :
- (xi.) Farmhouses, offices, and out-buildings, and other buildings for farm purposes :
- (xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise :
- (xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption :
- (xiv.) Tramways ; railways ; canals ; docks :
- (xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce,

45 & 46
 Vict. c. 38,
 ss. 25, 26.

and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes :

(xvi.) Markets and market-places :

(xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land :

(xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making and other works necessary or proper in connection with any of the objects aforesaid :

(xix.) Trial pits for mines, and other preliminary works necessary or proper in connection with development of mines :

(xx.) Reconstruction, enlargement, or improvement of any of those works.

Approval
 by Land
 Commis-
 sioners of
 scheme for
 improve-
 ment and
 payment
 thereon.

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an autho-

ritry and discharge for any payment made by them in pursuance thereof ; or on

45 & 46
Vict. c. 38,
ss. 26—28.

- (ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid ;
or on

- (iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

Concurrence in
improvements.

28.—(1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Commissioners by certificate in any case prescribe.

Obligation
on tenant
for life and
successors
to maintain,
insure, &c.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut

^{45 & 46}
Vict. c. 38,
ss. 28, 29. down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall, from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder or otherwise, report to the Commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The Commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

*Execution
 and repair
 of improve-
 ments.*

*Protection
 as regards
 waste in
 execution
 and repair
 of improve-
 ments.*

Execution and Repair of Improvements.

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use

thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

45 & 46
Vict. c. 38
ss. 29—31.

Improvement of Land Act, 1864.

*Improve-
ment of
Land Act,
1864.*

30. The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act.

Extension
of 27 & 28
Vict. c.
114, s. 9.

VIII.—CONTRACTS (b).

CON-
TRACTS.

31.—(1.) A tenant for life—

- (i.) May contract to make any sale, exchange, partition, mortgage, or charge; and
- (ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and
- (iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and
- (iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease

Power for
tenant for
life to
enter into
contracts.

(b) See Prec. III., p. 8, Prec. LXX., p. 128.

45 & 46
 Vict. c. 38,
 ss. 31, 32.

or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted ; and

- (v.) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same ; and
- (vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor ; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

IX.—MISCELLANEOUS PROVISIONS.

MISCELLANEOUS PROVISIONS.
 Application of money in court under Lands Clauses and other Acts.
 8 & 9 Vict. c. 18.
 23 & 24

32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in court, or is afterwards paid into court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in court, that

money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in court (c).

45 & 46
Vict. c. 38,
ss. 32—34.
Vict. c.
106.
32 & 33
Vict. c. 18.
40 & 41
Vict. c. 18.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

Applica-
tion of
money in
hands of
trustees
under
powers of
settle-
ment.

34. Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Applica-
tion of
money
paid for
lease or
reversion.

(c) Moneys in court under the Settled Estates Act were held not to be "cash under the control of the Court," under 23 & 24 Vict. c. 33, see *Re Boyd's Settled Estate*, 21 W. R. 667, and so with moneys under the Lands Clauses Act, see *Exp.*

Vicar of St. Mary Wigton, L. R. 18 Ch. D. 646, *Exp. Rector of Kirkmeaton*, 20 Ch. D. 203. This section of the Settled Land Act authorizes the investment of such moneys in in any manner mentioned in s. 21.

45 & 46
Vict. c. 38,
ss. 35—37.

Cutting
and sale of
timber,
and part
of pro-
ceeds to be
set aside.

35.—(1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Proceed-
ings for
protection
or recovery
of land
settled or
claimed as
settled.

36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

Heirlooms.

37.—(1.) Where personal chattels (*d*) are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

X.—TRUSTEES.

45 & 46
Vict. c. 38,
ss. 38—40.

38.—(1.) If at any time there are no trustees of a settle-
ment within the definition in this Act, or where in any
other case it is expedient, for purposes of this Act, that
new trustees of a settlement be appointed, the Court may,
if it thinks fit, on the application of the tenant for life or
of any other person having, under the settlement, an estate
or interest in the settled land, in possession, remainder, or
otherwise, or, in the case of an infant, of his testamentary
or other guardian, or next friend, appoint fit persons to be
trustees under the settlement for purposes of this Act (e).

TRUSTEES.
Appoint-
ment of
trustees by
Court.

(2.) The persons so appointed, and the survivors and
survivor of them, while continuing to be trustees or trustee,
and, until the appointment of new trustees, the personal
representatives or representative for the time being of the
last surviving or continuing trustee, shall for purposes of
this Act become and be the trustees or trustee of the settle-
ment.

39.—(1.) Notwithstanding anything in this Act, capital
money arising under this Act shall not be paid to fewer
than two persons as trustees of a settlement, unless the
settlement authorizes the receipt of capital trust money of
the settlement by one trustee (f).

Number of
trustees to
act.

(2.) Subject thereto, the provisions of this Act referring
to the trustees of a settlement apply to the surviving or
continuing trustees or trustee of the settlement for the
time being.

40. The receipt in writing of the trustees of a settle-
ment (g), or where one trustee is empowered to act, of one

Trustees'
receipts.

(e) See note (a), p. 330.

(f) There is obviously an objec-
tion to paying money to one trustee,
see *Re Dickinson's Trusts*, 1 Jur. N.
S. 724, *Re Roberts*, 9 W. R. 758.

(g) By trustees of a settlement is
meant "trustees with power of sale

or with power of consent to or
approval of the exercise of such a
power of sale, or the persons by the
settlement declared to be trustees
thereof for purposes of this Act,"
see s. 2, subs. 8, or trustees appointed
by the Court "for the purposes

45 & 46
 Vict. c. 38,
 ss. 40—42.

trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

Protection
 of each
 trustee in-
 dividually.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening though his own wilful default.

Protection
 of trustees
 generally.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance

of this Act" under s. 38. If there are trustees of a settlement without such power as aforesaid or not declared to be trustees for the purposes of this Act, they will apparently not be trustees of the settlement within

the meaning of this Act and will be incapable of receiving or giving receipt for any capital money. Payment into court is provided for by s. 46, suba. 2, p. 362.

purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

45 & 46
Vict. c. 38,
ss. 42—45.

43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

Trustees'
reimburse-
ment.

44. If at any time a difference arises between a tenant for life and the trustees of a settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit.

Reference
of differ-
ences to
Court.

45.—(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice (h) of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this

Notice to
trustees.

(h) No special form of notice would be necessary. But it is better that it should take a somewhat formal shape, so as to command attention. It might be as follows :

"I hereby give you notice that I intend to make a sale (or as the case may be) of Blackacre Farm containing acres or thereabouts

being portion of the hereditaments of which I am tenant for life under the Indenture of Settlement dated &c. (or, the will of J. S. dated &c.), of which you together with C. and D. are trustees."

(Signed) A.

To B. (trustee, or to the solicitor of the trustees).

45 & 46
 Vict. c. 38,
 ss. 45, 46.

section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

COURT;
 LAND COM-
 MISSION-
 ERS; PRO-
 CEDURE.
 Regula-
 tions re-
 specting
 payments
 into court,
 applica-
 tions, &c.

XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into court effectually exonerates therefrom the person making the payment (*i*).

(3.) Every application to the Court shall be by petition, or by summons at Chambers (*k*).

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(*i*) Payment to trustees is provided for by s. 40, p. 359.

(*k*) It will probably be found that the more important matters, such as applications for leave to grant building leases of more than 99 years, ap-

plications respecting improvements and applications respecting matters in difference or questions between the tenant for life and the trustees &c. &c., will be more conveniently dealt with by petition.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly.

45 & 46
Vict. c. 38,
ss. 46, 47.
39 & 40
Vict. c. 59.
44 & 45
Vict. c. 68

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any county court within the district whereof is situate any part of the land which is to be dealt with in the court, or from which the capital money to be dealt with in the court arises under this Act, or in connection with which the personal chattels to be dealt with in the court are settled.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the direction of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement,

Payment
of costs out
of settled
property.

45 & 46
 Vict. c. 38,
 ss. 47, 48.

or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

Constitu-
 tion of
 Land Com-
 missioners;
 their
 powers, &c.

48.—(1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and shall be styled the Land Commissioners for England.

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise any of those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders

of any court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

45 & 46
Vict. c. 38
s. 48.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners; and the Land Commissioners, for the purpose of prosecuting, or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864; and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them.

27 & 28
Vict. c. 114.

45 & 46
Vict. c. 38,
ss. 49—50.

Filing of
certifi-
cates, &c.,
of Com-
missioners.

49.—(1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

RESTRICTIONS,
SAVINGS,
AND
GENERAL
PROVISIONS.

Powers not
assignable.

XII.—RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

50.—(1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement (*l*).

Contract
not to
exercise
powers
void.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section

(*l*) The provisions of ss. 50, 51, 52, are intended to render it impossible for a tenant for life to be prevented from exercising the powers of this Act, whether by his own acts or by any provisions of the settlement. It has hitherto not unfrequently

been a matter of some doubt whether a tenant for life who has sold or mortgaged his interest could exercise the powers given to him by the settlement, see Dart's V. and P. 5th ed. p. 76.

assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

45 & 46
Vict. c. 38,
ss. 50—54.

51.—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

Prohibition or limitation against exercise of powers, void.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

Provision against forfeiture

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

Tenant for life trustee for all parties interested.

54. On a sale, exchange, partition, lease, mortgage, or General

45 & 46
 Vict. c. 38,
 ss. 54—56.

 protection
 of pur-
 chasers, &c.

charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

Exercise
 of powers;
 limitation
 of provi-
 sions, &c.

55.—(1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners are exercisable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

Saving for
 other
 powers.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be neces-

sary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act. 45 & 46
Vict. c. 38,
ss. 56—58.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

57.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act. Additional
or larger
powers by
settlement.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

XIII.—LIMITED OWNERS GENERALLY.

LIMITED
OWNERS
GENE-
RALLY.
Enumera-
tion of
other
limited
owners,
to have
powers of
tenant for
life.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

- (i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:
- (ii.) A tenant in fee simple, with an executory limita-

45 & 48
 Vict. c. 38,
 s. 58.

tion, gift, or disposition over, on failure of his issue, or in any other event (m):

- (iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:
- (iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:
- (v.) A tenant for the life of another, not holding merely under a lease at a rent:
- (vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose (m):
- (vii.) A tenant in tail after possibility of issue extinct:
- (viii.) A tenant by the curtesy:
- (ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

(m) See Conveyancing Act, 1882, s. 10, p. 348.

XIV.—INFANTS ; MARRIED WOMEN ; LUNATICS.

45 & 46
Vict. c. 38,
ss. 59—61.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

INFANTS;
MARRIED
WOMEN;
LUNATICS.

Infant
absolutely
entitled to
be as
tenant for
life.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement (n), and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Tenant for
life, infant.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

Married
woman,
how to be
affected.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act (o).

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the in-

(n) See Prec. XXVI., p. 47. As to the meaning of trustees of the settlement see note (a), p. 330.

(o) See Prec. XXVII., p. 50, and Married Women's Property Act, 1882, p. 148.

^{45 & 46}
 Vict. c. 38,
 ss. 61—63.

strument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

Tenant
 for life,
 lunatic.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act (*p*); and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

SETTLE-
 MENT BY
 WAY OF
 TRUSTS
 FOR SALE.
 Provision
 for case of
 trust to

XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE (*q*).

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments,

(*p*) See Prec. XXVIII., p. 51.

(*q*) This section brings such a settlement as is contained in Prec. LXXX. within the provisions of this Act. It was usual to make such settlement, where a sale was contemplated, by two separate deeds, one conveying the property to the trustees upon trust to sell, the other declaring the trusts of the purchase money. Under this section it seems that the trustees in such a case would nevertheless have no power of sale without the consent of the person

entitled to the benefit of the proceeds of sale for life, while he would in spite of the trust for sale in the trustees have a power of sale without their consent. On any sale by the trustees it would therefore be necessary that the tenant for life should join in the conveyance. Under these circumstances it seems better that such a settlement should in future be made by one deed and not by two deeds, see note (*p*) to Prec. LXXX., p. 169.

whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

45 & 46
Vict. c. 38,
s. 63.

sell and
re-invest
in land.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

- (i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons

45 & 46
Vict. c. 38,
s. 63.

interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

- (ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorized by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.
- (iii.) Capital money arising under this Act from the settled land, and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.
- (iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settle-

ment or by reason of the exercise of any power ^{45 & 46} of appointment or charging therein contained, ^{Vict. c. 88,} ^{ss. 63—65.} are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

XVI.—REPEALS.

REPEALS.

64.—(1.) The enactments described in the schedule to this Act are hereby repealed. ^{Repeal of enactments in schedule.}

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

XVII.—IRELAND.

IRELAND

65.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided. ^{Modifications respecting Ireland.}

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division.

45 & 46
Vict. c. 33,
s. 65.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division.

40 & 41
Vict. c. 57.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exercisable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

40 & 41
Vict. c. 56.

(7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exercisable by those Courts under this Act.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

THE SCHEDULE.

Section 64.

REPEALS.

23 & 24 Vict. c. 145. in part.	An Act to give to trustees, } mortgagees, and others, } certain powers now } in part; namely,— commonly inserted in } settlements, mortgages, } and wills - - - - - }
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Parts I. and IV.

(being so much of the Act as is not repealed
by the Conveyancing and Law of Property
Act, 1881).

27 & 28 Vict. c. 114. in part.	The Improvement of } Land Act, 1864 - - - } in part; namely,— Sections seventeen and eighteen: Section twenty-one, from “either by a party” to “benefice) or” (inclusive); and from “or if the land owner” to “minor or minors” (inclusive); and “or circumstance” (twice): Except as regards Scotland.
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40 & 41 Vict. c. 18. in part.	The Settled Estates Act, } 1877 - - - - - } in part; namely,— Section seventeen.
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SOLICITORS REMUNERATION ACT, 1881.

44 & 45 VICT. C. 44.

An Act for making better provision respecting the remuneration of Solicitors in Conveyancing and other non-contentious Business. [22nd August, 1881.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

- Short title.** 1.—(1.) This Act may be cited as the Solicitors Remuneration Act, 1881.
- Extent.** (2.) This Act does not extend to Scotland.
(3.) In this Act—
- Interpretation.** “Solicitor” means a solicitor or proctor qualified according to the statutes in that behalf:
- “Client” includes any person who, as a principal, or on behalf of another, or as trustee or executor, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, a solicitor, and any person for the time being liable to pay to a solicitor, for his services, any costs, remuneration, charges, expenses, or disbursements:
- “Person” includes a body of persons corporate or unincorporate:
- “Incorporated Law Society” means, in England, the society referred to under that title in the Act passed in the session of the twenty-third and twenty-fourth years of Her Majesty's reign, intituled “An Act to

amend the Laws relating to Attorneys, Solicitors, ^{44 & 45} Proctors, and Certificated Conveyancers"; and in ^{Vict. c. 44,} Ireland, the society referred to under that title in the ^{ss. 1, 2, 3.} Attorneys and Solicitors Act, Ireland, 1866:

"Provincial law societies or associations" means all ^{29 & 30} bodies of solicitors in England incorporated by Royal ^{Vict. c. 84.} Charter, or under the Joint Stock Companies Act, other than the Incorporated Law Society above mentioned.

General Orders.

2. In England, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, ^{Power to make General Orders for remuneration in conveyancing, &c.} and the president of one of the provincial law societies or associations, to be selected and nominated from time to time by the Lord Chancellor to serve during the tenure of office of such president, or any three of them, the Lord Chancellor being one, and, in Ireland, the Lord Chancellor, the Lord Chief Justice of Ireland, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, or any three of them, the Lord Chancellor being one, may from time to time make any such General Order as to them seems fit for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business not being business in any action, or transacted in any Court, or in the Chambers of any Judge or Master, and not being otherwise contentious business, and may revoke or alter any such Order.

3. One month at least before any such General Order shall be made, the Lord Chancellor shall cause a copy of the regulations and provisions proposed to be embodied therein to be communicated in writing to the Council of the Incorporated Law Society, ^{Communication to Incorporated Law Society.} who shall be at liberty to submit such observations and suggestions in writing as

44 & 45
 Vict. c. 44,
 ss. 3—5.

they may think fit to offer thereon; and the Lord Chancellor, and the other persons hereby authorized to make such Order, shall take into consideration any such observations or suggestions which may be submitted to them by the said Council within one month from the day on which such communication to the said Council shall have been made as aforesaid, and, after duly considering the same, may make such Order, either in the form or to the effect originally communicated to the said Council, or with such alterations, additions, or amendments, as to them may seem fit.

Principles
 of remuneration.

4. Any General Order under this Act may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following, among other, considerations; (namely),

The position of the party for whom the solicitor is concerned in any business, that is, whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like:

The place, district, and circumstances at or in which the business or part thereof is transacted:

The amount of the capital money or of the rent to which the business relates:

The skill, labour, and responsibility involved therein on the part of the solicitor:

The number and importance of the documents prepared or perused, without regard to length:

The average or ordinary remuneration obtained by solicitors in like business at the passing of this Act.

Security
 for costs,
 in-
 m

5. Any General Order under this Act may authorize and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any

such Order, to be ascertained by taxation or otherwise, and the allowance of interest.

44 & 45
Vict. c. 44,
ss. 5—8.

6.—(1.) Any General Order under this Act shall not take effect unless and until it has been laid before each House of Parliament, and one month thereafter has elapsed.

disburse-
ments.
Order to
be laid
before
Houses of
Parlia-
ment; dis-
allowance
on address.

(2.) If within that month an address is presented to the Queen by either House, seeking the disallowance of the Order, or part thereof, it shall be lawful for her Majesty, by Order in Council, to disallow the Order, or that part, and the Order or part disallowed shall not take effect.

7. As long as any General Order under this Act is in operation, the taxation of bills of costs of solicitors shall be regulated thereby.

Effect of
Order as to
taxation.

Agreements.

8.—(1.) With respect to any business to which the foregoing provisions of this Act relate, whether any General Order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after or in the course of the transaction of any such business, for the remuneration of the solicitor, to such amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or percentage, or by salary, or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly.

Power for
solicitor
and client
to agree on
form and
amount of
remunera-
tion.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the

44 & 45
Vict. c. 44,
ss. 8, 9. solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the Court may inquire into the facts, and certify the same to the Court; and if, upon such certificate, it shall appear to the Court or judge that just cause has been shown either for cancelling the agreement, or for reducing the amount payable under the same, the Court or judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or judge may seem fit.

Restriction on
Solicitors
Act, 1870.
33 & 34
Vict. c. 28.

9. The Attorneys and Solicitors Act, 1870, shall not apply to any business to which this Act relates.

**GENERAL ORDER MADE IN PURSUANCE OF THE SOLICITORS
REMUNERATION ACT, 1881,**

(44 & 45 Vict. c. 44).

We, the Right Honourable Roundell Baron Selborne, Lord High Chancellor of Great Britain, the Right Honourable John Duke Lord Coleridge, Lord Chief Justice of England, the Right Honourable Sir George Jessel, Master of the Rolls, and Enoch Harvey Esq., President of the Incorporated Law Society of Liverpool (being four of the persons in that behalf authorized by the Statute 44 & 45 Vict. c. 44), do hereby, in pursuance and execution of the powers given to us by the said Statute, and of all other powers and authorities enabling us in that behalf, order and direct in manner following:—

1. This Order is to take effect from and after the 31st day of December, 1883, except that Schedule I. hereto shall not apply to transactions respecting real property, the title to which has been registered under the Acts of 25 & 26 Vict. c. 53, 25 & 26 Vict. c. 67, and 38 & 39 Vict. c. 87.

2. Subject to the exception aforesaid, the remuneration of a solicitor in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business, not being business in any action, or transacted in any court, or in the chambers of any judge or master, is to be regulated as follows, namely:—

(a.) In respect of sales, purchases and mortgages completed, the remuneration of the solicitor having the conduct of the business, whether for the vendor, purchaser, mortgagor or mortgagee, is to be that prescribed in Part I. of Schedule I. to this Order, and to be subject to the regulations therein contained.

(b.) In respect of leases, and agreements for leases, of the kinds mentioned in Part II. of Schedule I. to this Order, or conveyances reserving rent, or agreements for the same, when the transactions shall have been completed, the remuneration of the solicitor having the conduct of the business is to be that prescribed in Part II. of such Schedule I.

(c.) In respect of business not hereinbefore provided for, connected with any transaction the remuneration for which, if completed, is hereinbefore, or in Schedule I. hereto, prescribed, but which is not, in fact, completed, and in respect of settlements, mining leases or licences, or agreements therefor, re-conveyances, transfers of mortgage, or further charges, not provided for hereinbefore or in Schedule I. hereto, assignments of leases not by way of purchase or mortgage, and in respect of all other deeds or documents, and of all other business the remuneration for which is not hereinbefore, or in Schedule I. hereto, prescribed, the remuneration is to be regulated according to the present system as altered by Schedule II. hereto.

3. Drafts and copies made in the course of business, the remuneration for which is provided for by this Order, are to be the property of the client.

4. The remuneration prescribed by Schedule I. to this Order is not to include stamps, counsel's fees, auctioneer's or valuer's charges, travelling or hotel expenses, fees paid on searches to public officers, on registrations, or to stewards of manors, costs of extracts from any register, record, or roll, or other disbursement reasonably and properly paid, nor any extra work occasioned by changes occurring in the course of any business, such as the death or insolvency of a party to the transaction, nor is it to include any business of a contentious character, nor any proceedings in any court, but it shall include law stationer's charges, and allowances for time of the solicitor and his clerks, and for copying and parchment, and all other similar disbursements.

5. In respect of any business which is required to be, and is, by special exertion, carried through in an exceptionally short space of time, a solicitor may be allowed a proper additional remuneration for the special exertion, according to the circumstances.

6. In all cases to which the scales prescribed in Schedule I. hereto shall apply, a solicitor may, before undertaking any business, by writing under his hand, communicated to the client, elect that his remuneration shall be according to the present system as altered by Schedule II. hereto; but if no such election shall be made, his remuneration shall be according to the scale prescribed by this Order.

7. A solicitor may accept from his client, and a client may give to his solicitor, security for the amount to become due to the solicitor for business to be transacted by him, and for interest on such amount, but so that interest is not to commence till the amount due is ascertained, either by agreement or taxation. A solicitor may charge interest at four per cent. per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client. And in cases where the same are payable by an infant, or out of a fund not presently available, such demand may be made on the parent or guardian, or the trustee or other person liable.

8. In this Order, and the Schedules hereto, the following words and expressions shall have the meaning ascribed to them in the 3rd sub-section of section 1 of the Solicitors Remuneration Act, 1881, viz.:—

Solicitor,
Client,
Person.

SCHEDULE I.

PART I.

Scale of Charges on Sales, Purchases, and Mortgages, and Rules applicable thereto.

SCALE.

	(1.) For the 1st £1,000.	(2.) For the 2nd and 3rd £1,000.	(3.) For the 4th and each subsequent £1,000 up to £10,000.	(4.) For each subsequent £1,000 up to £100,000.
Vendor's solicitor for negotiating a sale of property by private contract	20s. per £100.	20s. per £100.	10s. per £100.	5s. per £100.
Do., do., for conducting a sale of property by public auction, including the conditions of sale—				
When the property is sold	20s.	10s.	5s.	2s. 6d. „
When the property is not sold, then on the reserved price	10s.	5s.	2s. 6d. „	1s. 3d. „
[N.B.—A minimum charge of £5 to be made whether a sale is effected or not.]				
Do., do., for deducing title to freehold, copyhold, or leasehold property, and perusing, and completing conveyance (including preparation of contract, or conditions of sale, if any)	30s.	20s.	10s.	5s.
Purchaser's solicitor for negotiating a purchase of property by private contract	20s.	20s.	10s.	5s.
Do., do., for investigating title to freehold, copyhold, or leasehold property, and preparing and completing conveyance (including perusal and completion of contract, if any)	30s.	20s.	10s.	5s.
Mortgagor's solicitor for deducing title to freehold, copyhold, or leasehold property, perusing mortgage, and completing	30s.	20s.	10s.	5s.
Mortgagee's solicitor for negotiating loan	20s.	20s.	5s.	2s. 6d. „
Do., do., for investigating title to freehold, copyhold, or leasehold property; and preparing and completing mortgage	30s.	20s.	10s.	5s.
Vendor's or mortgagor's solicitor for procuring execution and acknowledgment of deed by a married woman	£2 10s. extra.			

* Every transaction exceeding £100,000 to be charged for as if it were for £100,000.

RULES.

1. The commission for deducing title and perusing and completing conveyance on a sale by auction is to be chargeable on each lot of property, except that where a property held under the same title is divided into lots for convenience of sale, and the same purchaser buys several such lots and takes one conveyance, and only one abstract is delivered, the commission is to be chargeable upon the aggregate prices of the lots.

2. The commission on an attempted sale by auction in lots is to be chargeable on the aggregate of the reserved prices. When property offered for sale by auction is bought in and terms of sale are afterwards negotiated and arranged by the solicitor, he is to be entitled to charge commission according to the above scales on the reserved price where the property is not sold, and also one-half of the commission for negotiating the sale. When property is bought in and afterwards offered by auction by the same solicitor, he is only to be entitled to the scale for the first attempted sale, and for each subsequent sale ineffectually attempted he is to charge according to the present system, as altered by Schedule II. hereto. In case of a subsequent effectual sale by auction, the full commission for an effectual sale is to be chargeable in addition, less one-half of the commission previously allowed on the first attempted sale. The provisions of this Rule as to commission on sales or attempted sales by auction are to be subject to Rule 2.

3. Where a solicitor is concerned for both mortgagor and mortgagee, he is to be entitled to charge the mortgagee's solicitor's charges and one-half of those which would be allowed to the mortgagor's solicitor up to £5,000, and on any excess above £5,000 one-fourth thereof.

4. If a solicitor peruses a draft on behalf of several parties having distinct interests, proper to be separately represented, he is to be entitled to charge £2 additional for each such party after the first.

5. Where a party, other than the vendor or mortgagor, joins in a conveyance or mortgage, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II. hereto.

6. Where a conveyance and mortgage of the same property are completed at the same time, and are prepared by the same solicitor, he is to be entitled to charge only half the above fees for investigating title, and preparing the mortgage deed up to £5,000, and, on any excess above £5,000, one-fourth thereof, in addition to his full charges upon the purchase-money and his commissions for negotiating (if any).

7. Fractions of £100, under £50, are to be reckoned as £50. Fractions of £100, above £50, are to be reckoned as £100.

8. Where the prescribed remuneration would, but for this provision, amount to less than £5, the prescribed remuneration shall be £5, except on transactions under £100, in which cases the remuneration of the solicitor for the vendor, purchaser, mortgagor, or mortgagee, is to be £3.

9. Where a property is sold subject to incumbrances, the amount of the incumbrances is to be deemed a part of the purchase-money, except where the mortgage purchases, in which case the charge of his solicitor shall be calculated upon the price of the equity of redemption.

10. The above scale as to mortgages is to apply to transfers of mortgages where the title is investigated, but not to transfers where the title was investigated by the same solicitor on the original mortgage or on any previous transfer; and it is not to apply to further charges where the title has been so previously investigated. As to such transfers and further charges the remuneration is to be regulated according to the present system as altered by Schedule II. hereto. But the scale for negotiating the loan shall be chargeable on such transfers and further charges where it is applicable.

11. The scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. The scale for negotiating shall apply to cases where the solicitor of a vendor or purchaser arranges the sale or purchase and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer, or estate or other agent. As to a mortgagee's solicitor it shall only apply to cases where he arranges and obtains the loan from a person for whom he acts. In case of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply.

12. In cases where, under the previous portion of this Schedule, a solicitor would be entitled to charge a commission for negotiating a sale or mortgage, or for conducting a sale by auction, and he shall not charge such commission, then he shall be entitled to charge the rates allowed by the first column on all transactions up to £2,000, and to charge in addition those allowed by the second column on all amounts above £2,000 and not exceeding £5,000, and further to charge those allowed by the third column on all amounts above £5,000 and not exceeding £50,000, instead of the rates allowed up to the amounts mentioned in those columns respectively.

PART II.

Scale of Charges as to Leases, or Agreements for Leases, at Rack Rent (other than a Mining Lease, or a Lease for Building Purposes, or Agreement for the same).

Lessor's solicitor for preparing, settling, and completing lease and counterpart:—

Where the rent does not exceed £100	{ £7 10s. per cent. on the rental, but not less in any case than £5.
Where the rent exceeds £100 and does not exceed £500.	{ £7 10s. in respect of the first £100 of rent, and £2 10s. in respect of each subsequent £100 of rent.
Where the rent exceeds £500.	{ £7 10s. in respect of the first £100 of rent, £2 10s. in respect of each £100 of rent up to £500, and £1 in respect of every subsequent £100.
Lessee's solicitor for perusing draft and completing.	{ One-half of the amount payable to the Lessor's solicitor.

Scale of Charges as to Conveyances in Fee, or for any other Freehold Estate, reserving Rent, or Building Leases reserving Rent, or other Long Leases not at Rack Rent (except Mining Leases), or Agreements for the same respectively.

Vendor's or lessor's solicitor for preparing, settling, and completing conveyance and duplicate, or lease and counterpart:—

Amount of Annual Rent.	Amount of Remuneration.
Where it does not exceed £5	{ £5.
Where it exceeds £5 and does not exceed } £50	{ The same payment as on a rent of £5, and also 20 per cent. on the excess beyond £5.
Where it exceeds £50 and does not exceed } £150	{ The same payment as on a rent of £50, and 10 per cent. on the excess beyond £50.
Where it exceeds..... £150	{ The same payment as on a rent of £150, and 5 per cent. on the excess beyond £150.

Where a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

Purchaser's or lessee's solicitor for { One-half of the amount payable to the vendor's or
perusing draft and completing. { lessor's solicitor.

RULES APPLICABLE TO PART II. OF SCHEDULE I.

As to all Leases, or Conveyances at a Rent, or Agreements for the same, other than Mining Leases and Agreements therefor.

1. Where the vendor or lessor furnishes an abstract of title, it is to be charged for according to the present system as altered by Schedule II.

2. Where a solicitor is concerned for both vendor and purchaser, or lessor and lessee, he is to charge the vendor's or lessor's solicitor's charges and one-half of that of the purchaser's or lessee's solicitor.

3. Where a mortgagee or mortgagor joins in a conveyance or lease, the vendor's or lessor's solicitor is to charge £1 1s. extra.

4. Where a party other than a vendor or lessor joins in a conveyance or lease, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II.

5. Where a conveyance or lease is partly in consideration of a money payment or premium, and partly of a rent, then, in addition to the remuneration hereby prescribed in respect of the rent, there shall be paid a further sum equal to the remuneration on a purchase at a price equal to such money payment or premium.

6. Fractions of £5 are to be reckoned as £5.

SCHEDULE II.

INSTRUCTIONS FOR AND DRAWING AND PERUSING DEEDS, WILLS, AND OTHER DOCUMENTS.

Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case, may be fair and reasonable. In ordinary cases, as to drawing, &c., the allowance shall be

For drawing	...	...	...	...	...	...	...	...	2s. per folio.
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ATTENDANCES.

In ordinary cases	...	...	...	...	...	...	...	...	s. d. 10 0
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In extraordinary cases the taxing master may increase or diminish the above charge, if for any special reasons he shall think fit.

ABSTRACTS OF TITLE (WHERE NOT COVERED BY THE ABOVE SCALES).

Drawing each brief sheet of 8 folios	...	...	...	...	...	...	...	...	s. d. 6 8
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JOURNEYS FROM HOME.

In ordinary cases for every day of not less than seven hours employed on business or in travelling	...	...	...	...	...	...	...	...	£ s. d. 5 5 0
Where a less time than seven hours is so employed	...	...	...	...	...	...	...	per hour	0 15 0

In extraordinary cases the taxing master may increase or diminish the above allowance, if for any special reasons he shall think fit.

(Signed) SELBORNE, C.
COLERIDGE, C.J.
G. JESSEL, M.R.
E. HARVEY.

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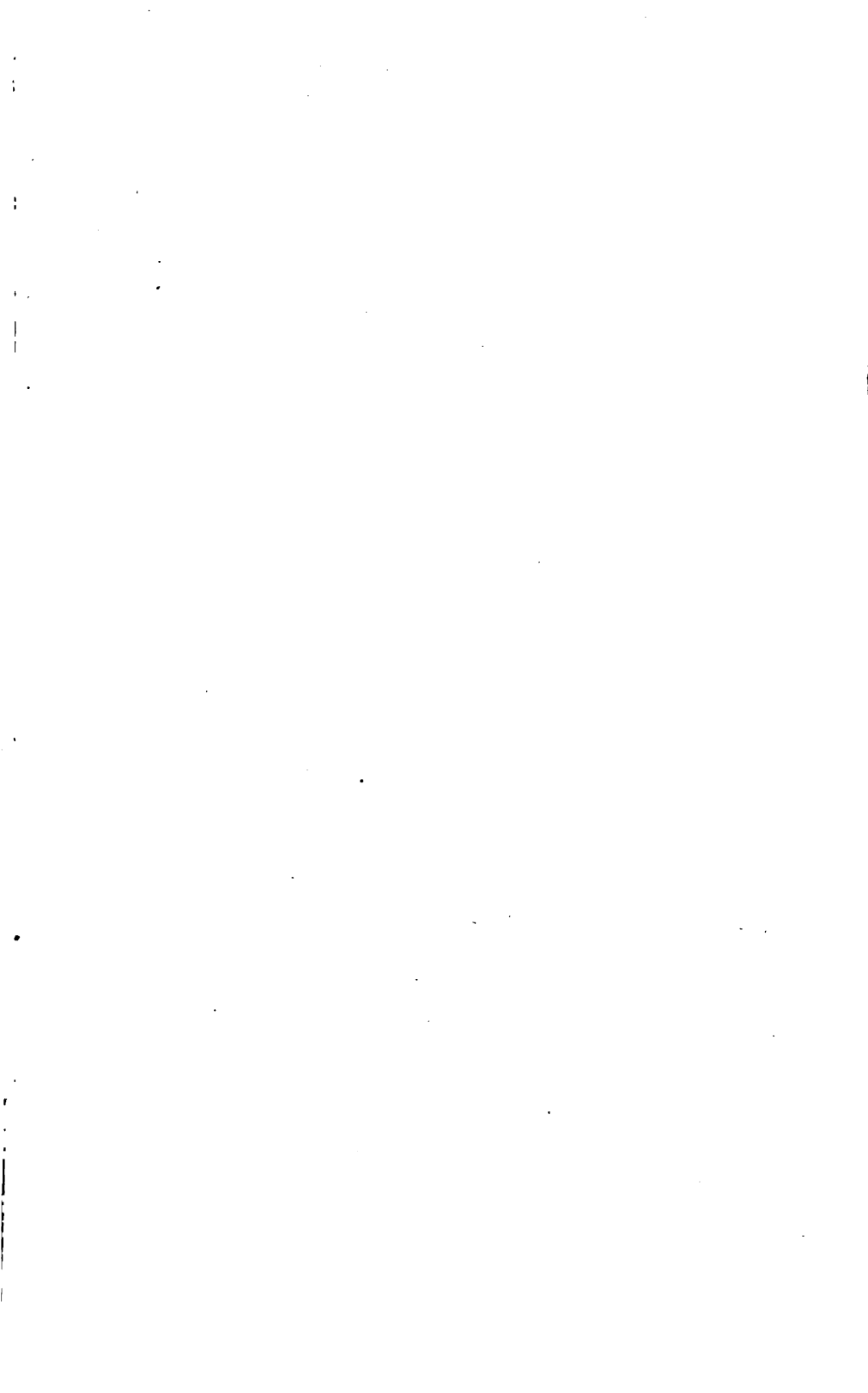
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